

T H E
J U S T I C E of the P E A C E,
A N D
P A R I S H O F F I C E R.

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MAJESTY'S Justices of the Peace for the Counties
of WESTMORLAND and CUMBERLAND.

The T W E L F T H E D I T I O N.

V O L. II.

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Excise and Customs.

AS the customs and excise, so far as justices of the peace, constables and other peace officers, are concerned therein, are in some measure connected and interwoven with each other; it is thought proper here to represent them together, that the reader may at once have a full and distinct comprehension of the whole.

- I. Of the customs in general.
- II. Of the excise in general.
- III. Of the several goods in particular, under the management of the commissioners of the customs and excise.

I. Of the customs in general.

Note; There are two general books of rates for ascertaining the values of goods on importation, according to which the customs shall be paid; the one signed by Sir *Harbottle Grimstone* baronet, speaker of the house of commons, referred to, established, and confirmed by the act of tonnage and poundage 12 C. 2. c. 4. The other, signed by *Spencer Compton*, esquire, speaker of the house of commons, being an additional book of rates of goods imported, not particularly specified in the former book of rates: The latter of which, as being part of the act itself, is inserted in the statutes at large, 11 G. c. 7. but the former, altho' it is as necessary to be known, yet being no part of the act, is not inserted therein; but may be found in Mr. *Gay's* abridgment. And to these divers additions have been made by subsequent acts of parliament.

I. When any commission shall be issued for constituting commissioners of the customs, two of them first named in the commission shall be sworn before the chancellor, or chief baron of the exchequer, or master of the rolls, *for the true and faithful execution, to the best of their knowledge and power, of the trust committed to their charge and inspection, and that they will not take or receive any re-*

Appointing and
swearing com-
missioners,

Excise and customs.

ward or gratuity, directly or indirectly, other than their salaries, and what shall be allowed them from the crown, or the regular fees established by law, for any service to be done, in the execution of their employment in the customs, on any account whatsoever.
6 W. c. 1. f. 5.

And every other of the commissioners and patent officers, and every of their deputies, clerks, or servants, and all other officers who shall have any employment in or about the customs, shall at their admission, if it is within the ports of *London*, take the said oath before two commissioners; and elsewhere, before two justices of the peace in the county, town, or place, where his employment shall be; and every person not taking such oath, shall forfeit his office. *id.*

And the persons hereby respectively authorized to administer the oath, shall certify the taking thereof, to the next sessions to be held for the county or place where the oath was administered, to be kept amongst the records. *id.* f. 6.

In what cases
they only can
make seizures.

2. By the 13 & 14 C. 2. c. 11. No ship or goods shall be seized as forfeited for unlawful importation or exportation, or non-payment of customs, but by officers of the customs. f. 15.

But by the 8 G. c. 18. Spirituous liquors, *British* or foreign, and all foreign exciseable liquors forfeited, together with the casks or other package, may be seized by any officer of the customs or excise, or by such persons as shall be deputed by warrant from the lord-treasurer, or under treasurer, or by special commission under the great or privy seal, but by no other person. f. 24.

And by the 33 G. 2. c. 9. Officers of excise as well as those of the customs, may seize all ships, vessels, boats, wherries, pinnaces, barges, or gallies, liable to be forfeited for any of the reasons contained in any of the acts of 8 G. c. 18. 11 G. c. 30. 12 G. c. 28. hereafter following, and proceed to condemn the same as the officers of the customs may do. f. 24.

And by the 9 G. 3. c. 6. The officers of excise may seize horses, or other cattle and carriages made use of in carrying brandy, arrack, rum, spirits, and strong waters (customs and other duties not being first paid or secured), and proceed to condemnation thereof, in the same manner as officers of the customs may do.

Shipping or land-
ing goods with-
out warrant.

3. If any goods shall be laden or taken in from the shore, into any barge, hoy, wherry, or boat, to be carried aboard any ship outward bound; or laden or taken in out of any ship

Ship coming in from foreign parts without a warrant and presence of an officer of the customs; such barge, hoy, wherry, or boat shall be forfeited; and the warfanger offending shall forfeit 100 l. and the master, purser, boat-swain, or other mariner of any ship inward bound, consenting thereunto, shall forfeit the value of the goods so unshipped; half to the king, and half to him that shall sue. 13 & 14 C. 2. c. 11. s. 7.

And if any carman, porter, waterman, or other person, shall assist in the taking up, landing, shipping off, or carrying away, any such goods; such person being apprehended by the warrant of any justice of the peace, and the same being proved by the oath of two witnesses, the said offender for the first offence shall by the justice be committed to the next goal, there to remain till they find surety of the good behaviour for so long time until he be discharged by the lord treasurer, chancellor, under treasurer, or barons of the exchequer; and for the second offence he may by any justice of the peace as aforesaid, be committed to the next gaol, there to remain for two months without bail, or until he shall pay to the sheriff 5 l. for the king's use, or until he shall be discharged by the court of exchequer as aforesaid. *id.*

4. And here, on occasion of the forfeiture of the boat or vessel, mentioned in the preceding section, it is proper to take notice of a general clause in the statute of 8 G. c. 18. which brings the cognizance not only of the said forfeiture, but also of several others hereafter following, under the jurisdiction of the justices of the peace; and consequently enlarges considerably this title relating to the customs; to wit, In regard that the keeping and maintaining the horses seized, from the time of the seizure, to the time of condemnation in the court of exchequer, is very chargeable, and the charge of condemning such vessels, boats, and horses, is very great; therefore it is enacted, that all seizures of vessels or boats of 15 tons or under, by virtue of any act relating to the customs, for carrying uncustomed or prohibited goods, or for relanding debenture goods; and all seizures of horses, or other cattle, or carriages for carrying such goods, may be heard and determined in such manner as is appointed by the act of 6 G. c. 21. except as therein excepted; that is to say, All such seizures may in a summary way be determined by two justices of the peace residing near the place where the seizure is made; who shall summon the party accused, and on appearance or default proceed to hear and give judgment,

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judgment, and issue warrants for sale of such as shall be by them condemned: whose judgment shall not be liable to any appeal or certiorari. 8 G. c. 18. f. 16.

Justices on trial
to proceed on
the merits.

5. And by the 9 G. 2. c. 35. In trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. f. 34.

Officer on trial
need not prove
his commission.

6. And if any question shall arise, whether any person be an officer of the customs, proof shall be admitted, that such person was reputed to be, and had acted in such office, and at the time when the matter in controversy was done, without proving or producing the commission. 11 G. c. 30. f. 32.

Proof to lie on
the owner.

7. And if any dispute shall arise, whether the customs have been paid; the proof shall lie on the owner, and not on the officer. 12 G. c. 28. f. 8.

Goods relanded
after drawback.

8. If any foreign goods specified in any certificate, whereupon any drawback is to be made, or debentures to be made forth for any such drawback, shall not be really and *bona fide* shipped and exported (danger of the seas and enemies excepted), or shall be landed again, unless in case of distress to save the goods from perishing, which shall presently be made known to the principal officer of the port; then not only all such certificate goods shall be forfeited, but also the person relanding the same, or concerned therein, or to whose hands they shall knowingly come, or by whose privity they are relanded, shall forfeit double value of the drawback, together with the vessels, boats, horses, cattle, and carriages, made use of in landing or carrying the same; half to the king, and half to him that shall inform, seize, or sue in the courts at *Westminster*. 8 Ann. c. 13. f. 16. But by the clause abovementioned, the boats, cattle, and carriages, may be recovered before the justices of the peace.

On shipping with
intent to land.

9. By the 8 An. c. 7. If any goods shall be unshipped, with intention to be landed, without paying customs, or if any prohibited goods shall be imported; then not only the said goods shall be forfeited, but also the persons assisting or concerned therein, or to whose hands they shall come, shall forfeit treble value, together with the vessels, boats, horses, and other cattle, and carriages; half to the king, and half to him that shall seize or sue. f. 17.

Power to search.

10. Any person authorized by writ of assistants out of the exchequer, may take a constable or other publick officer near, and in the day time enter any house or place, and in case of resistance break open doors, chests, and other package, there to seize, and from thence to bring goods

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prohibited and uncustomed, and secure them in the king's warehouse. 13 & 14 C. 2. c. 11. f. 5.

11. If prohibited or customable goods shall be found by any officer of the customs, in a bark, hoy, lighter, barge, boat, or wherry on the water; or coming directly from the water side, without the presence of an officer, or if such goods shall, on information of a credible person, be found in any house or place, on search made as by the said statute of 13 & 14 C. 2. c. 11. such officer may stop and put the said goods in the king's warehouse, until the claimer shall make proof before the commissioners, if it be in the port of *London*, that the duties have been paid or secured, or that the same had been bought in a lawful way of trade, and that such person verily believes the duties to have been paid, or that the said goods had been compounded for, or condemned in the exchequer, or been otherwise delivered by writ of that court, and that the prohibited goods had been compounded for, or condemned, or otherwise delivered, as aforesaid; in which case, the goods shall be delivered without delay or charge. And if the goods be stopped in any other port, the claimer shall make the like proof and deliver the same to the collector, or in his absence to one of the other principal officers of the port, which proof shall forthwith be transmitted to the commissioners for their directions touching the delivery of the goods, or for seizing the same and prosecution. 6 G. c. 21. f. 39.

Provided such proof be made within ten days; in failure whereof the goods may be seized and prosecuted as by the laws against the importation of prohibited or uncustomed goods. f. 40.

If on such prosecution, where no application hath been made to the commissioners or officers aforesaid, and not otherwise, the property of the goods shall be claimed, and the question shall arise whether the duties were paid, or the goods had been compounded for, or condemned, or otherwise delivered by writ out of the exchequer, or bought in a lawful way of trade, the proof shall lie on the claimer; and if the claimer recovers his goods, he shall have costs likewise, which shall be reckoned as a full satisfaction for damages. f. 41.

Where the claimer shall make proof, either by oath before a justice of the peace, or otherwise, to the satisfaction of the commissioners or officers of the customs, so as to induce them to order a delivery of the goods, and if the owner shall receive any damage by such stop; he may bring his action for his reasonable damages. f. 42.

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But the officer, if he pleases, may prosecute, notwithstanding the directions of the commissioners; in which case he shall be liable to be sued by the owner for recovery of his goods with full costs; or if the commissioners shall give no directions for delivery of the goods, the owner nevertheless may sue for them with costs and damages, *f. 43.*

Goods taken in
at sea,

12. If any foreign goods shall be taken in at sea, or put out of any ship within four leagues from the coast, without payment of the customs and other duties (unless in case of necessity, or for a lawful reason, of which the master shall give immediate notice and make proof, before the chief officer of the customs of the first port where he shall arrive); the same shall be forfeited, and every person aiding or concerned therein shall forfeit treble value; and the vessel into which the same shall be taken, shall be forfeited, not exceeding 100 tons; and the master of the vessel out of which they are taken, shall also forfeit treble value; half to the king and half to him that shall seize or sue. *9 G. 2. c. 35. f. 23.*

Vessel hovering
near the coast.

13. Where any vessel, coming from foreign parts, having on board any goods liable to forfeiture by any act now in force on being imported, shall be found at anchor, or hovering within the limits of any port, or within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity and distress of weather, of which the master or other person having charge of the vessel shall give notice and make proof before the collector or other chief officer of the customs, immediately after the arrival of the vessel in such port: all such goods, together with the chests, boxes, casks, and other package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also, with her tackle and furniture, shall be forfeited, provided such vessel doth not exceed the burthen of 50 tons; half the produce, after the sale thereof, (charges deducted,) to be to the king, and half to the officer who shall make the seizure. *5 G. 3. c. 43. f. 38.*

Officers may
search coasting
vessels.

14. Any officer of the customs or excise (producing his warrants or deputation, if required) may go on board any coasting vessel, and search for prohibited and uncustomed goods, and continue on board during the vessel's stay within the limits of the port; and if any person shall obstruct him he shall forfeit 100*l.* *9 G. 2. c. 35. f. 29.*

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15. On oath made before a justice of the peace, that any person is lurking within five miles of the sea coast or any navigable river, and there is reason to suspect that he waits with intent to be aiding in running goods, the justice may grant his warrant to bring him before him; and if he shall not give a satisfactory account of himself and his employment, or otherwise make it appear that he is not concerned in any clandestine or unlawful business, he shall be committed to the house of correction, to be whipt and kept to hard labour not exceeding one month: And the commissioners of the customs or excise shall cause to be paid to the informer a reward of 20s. for each offender. *9 G. 2. c. 35. f. 18.*

Persons lurking within five miles of the coast.

But if such person shall desire time for clearing himself, he shall not be punished by whipping or other correction, but committed to the common gaol till he shall so do, or till he find security not to be guilty of any the said offences. *f. 19.*

16. If any person shall knowingly receive or buy any run goods; he shall on conviction (after summons) by confession, or oath of one witness, before one justice where the offence shall be committed or the offender shall be found, forfeit 20l. half to the informer, and half to the poor, by distress; for want of distress, to be committed to prison for three months. *8 G. c. 18. f. 10.*

Buying or receiving run goods.

17. And by the *11 G. c. 30.* If any person shall harbour, keep, or conceal, or suffer to be harboured, kept, or concealed, any prohibited or run goods liable to pay customs; he shall (whether he claim any property in them or not) forfeit the same, and treble value, to be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*, half to the king, and half to him that shall sue. *f. 16.*

Concealing run goods.

18. And if any person shall offer to sale any prohibited goods, or which have been, or are by him pretended to have been run; the same, together with the package shall be forfeited, and be seized by the party to whom they are offered to sale, or by any officer of the customs or excise. Provided that if the seizure is within the bills of mortality, then within 24 hours, if elsewhere within 48 hours, they be put into the king's warehouse near the place of seizure, and if it be far from any such warehouse, then in some excise office near. *11 G. c. 30. f. 18.*

Offering to sale run goods.

And the person offering them to sale, shall also forfeit treble value. *f. 19.*

And

Excise and customs.

And the said goods, if sold, may be seized (with the package) from the buyer, either by the seller or any such officer. *f. 20.*

And the buyer shall also forfeit treble value. But both buyer and seller shall not be prosecuted for the same goods, but whether of them shall first prosecute the other shall be discharged; but if prosecution shall not be commenced in a month, the warehouse keeper may prosecute. *f. 21.*

Which said forfeitures shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; half to the king, and half to him that shall sue. *f. 39.*

Porter carrying
run goods.

19. All porters, and others, knowingly carrying run or prohibited goods, and who shall be convicted thereof, (on appearance or default) on the oath of one witness, or confession, before one justice where the offence shall be committed, or the offender found, shall forfeit treble value, half to the informer, and half to the poor, to be levied by distress by warrant of such justice, and for want of distress to be committed to the house of correction, to be whipt and kept to hard labour not exceeding three months. *9 G. 2. c. 35. f. 21.*

Persons armed
or disguised car-
rying run goods.

20. Persons passing with foreign goods landed without entry, within 20 miles of the coast, if they be more than five in number, or armed, or disguised, or who shall forcibly resist the officers of the customs or excise in seizing run goods, shall be guilty of felony, and transported for seven years. *8. G. c. 18. f. 6.*

But if any offender shall in two months after his offence and before conviction, discover his accomplices, so as two or more be convicted; he shall have a reward of 40 l. if the value of the run goods exceed 50 l. and shall be acquitted. *f. 7.*

And any other person discovering any one offender, in three months, so as he be convicted, shall have in like manner 40 l. over and above what he may be intitled to on account of the said run goods. *f. 8.*

And by the *9 G. 2. c. 35.* Persons being two or more in company, who shall be found passing within five miles from the coast, or from any navigable river, with one or more horses, or with any cart or carriage, whereon there shall be laden more than six pounds of tea, or spirituous liquors exceeding five gallons, not having paid the duties, and not having a permit, or any other foreign goods of above 30 l. value, landed without entry and payment of duties, and shall carry any offensive arms, or wear any disguise, or shall forcibly obstruct, or resist any officer of the customs or ex-
cise

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cise in seizing or securing any prohibited, uncustomed, or run goods, or other execution of their office, shall be deemed runners of foreign goods, within the meaning of the said act of 8 G. c. 18. altho' no proof shall be made that such goods were run, or had not been entred and paid duty; but the poof of such entry and payment, and how they came by the goods, shall lie on such persons; and every person convicted of any such offence, shall be guilty of felony, and transported for seven years. *f. 13.*

And all the goods so found, weapons, horses, cattle, carriages, and their furniture, chests, bags, casks, and other package shall be forfeited. *f. 14.*

And if any officer or other person shall lose any limb, or be otherwise maimed or dangerously wounded by any offender last mentioned, or in endeavouring to apprehend him, he shall on the conviction of such offender have a reward of 50 l. over and above any other reward he may be intitled to by this act. *f. 15.*

And if any person be killed in endeavouring to apprehend such offender, his executors or administrators (on certificate under hand and seal of the judge of assize for the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have 50 l. over and above any other reward they may be intitled to by this act. *f. 15.*

And if any person shall, in three months after such last mentioned offence committed, discover to the commissioners of the customs or excise, any offender so as he be convicted; he shall have 50 l. over and above any other reward he may be intitled to by any law. *f. 16.*

And the commissioners of the customs or excise shall cause the rewards to be paid out of the said revenues, on producing a certificate under the hand of the judge certifying the conviction, or on producing such certificate of the person being killed: and if any dispute shall arise between the persons intitled to the reward, the same shall be adjudged by the commissioners. *f. 17.*

21. And upon information on oath before a justice of the peace, that any persons, to the number of three or more, are or have been assembled, to be aiding in the clandestine running, landing, or carrying away prohibited and uncustomed goods, or to rescue them after seizure, and armed with fire arms or other offensive weapons; he shall grant his warrant to the constables and other peace officers, requiring them to take to their assistance as many as may be thought necessary for apprehending such persons: and he

Apprehending
riotous smugglers.

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he may, if on examination he find cause, commit them to the next county gaol, there to remain without bail or mainprize, until they be discharged by due course of law : and such persons, on conviction of their being assembled and armed as aforesaid, shall be adjudged guilty of felony, and transported for seven years. 9 G. 2. c. 35. §. 10.

And the apprehender for every person convicted shall have a reward of 50 l. immediately after conviction and demand made, tendring a certificate under the hand of the judge, certifying the conviction, and that he was taken by the person claiming the reward. §. 11.

And if any person shall lose a limb, be maimed or dangerously wounded, in apprehending or endeavouring to apprehend, or pursuing such offender ; he shall on such conviction have a reward of 50 l. over and above any other reward that he shall be intitled to by this act. §. 11.

And if any person shall be killed in taking, or endeavouring to take such offender ; his executors or administrators (on certificate under the hand and seal of the judge of assize of the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have a reward of 50 l. over and above any other reward they may be intitled to by this act. §. 11.

And if any offender shall in three months after his offence, and before his conviction, discover two or more accomplices, to the commissioners of the customs or excise, so as two be convicted ; he shall have 50 l. for every person so convicted, and be discharged of his offence. §. 12.

The said rewards to be paid as in the last section.

Outlawed smugglers.

22. By the 19 G. 2. c. 34. If any persons, to the number of three or more, armed with fire arms or other offensive weapons, shall be assembled in order to assist in the exportation of goods prohibited to be exported, or in running any prohibited or uncustomed goods, or goods liable to pay duties which have not been paid, or in relanding goods after drawback, or in rescuing the same after seizure, or in rescuing any person apprehended for any offence made felony by any act relating to the customs or excise, or in preventing his being apprehended ; or if any person shall have his face blacked, or wear any disguise, when passing with such goods ; or shall forcibly hinder or assault any officer in the seizing such goods, or dangerously wound any officer attempting to go on board any vessel, or shoot at or wound him when on board ; he shall be guilty of felony without benefit of clergy. §. 1.

And

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And persons charged with any the said offences, before a justice of the peace, by information on oath of one or more credible persons to be subscribed by him or them, the justice shall forthwith certify the same under his hand and seal, and return the information to one of the secretaries of state, who shall lay the same before the king in council; who may thereon make his order, commanding the offender to surrender in 40 days after the first publication thereof in the gazette, to the lord chief justice, or any other of the justices of the king's bench, or to some justice of the peace, who thereon shall commit him to gaol, to answer the charge against him according to due course of law: Which order the clerks of the privy council shall cause to be forthwith published in the two successive gazettes, and to be transmitted to the sheriff where the offence was committed; who shall in 14 days cause the same to be proclaimed between ten in the morning and two in the afternoon, in the market places, on the market days of two market towns in the same county, near the place where the offence was committed; and a copy of the order shall be affixed on some publick place in the said towns: And if such offender shall not surrender pursuant to such order, or escape after surrender, he shall be attainted of felony without benefit of clergy. *f. 2.*

And if any person after the time appointed for surrender, shall knowingly harbour such offender; he shall, on conviction within one year, be guilty of felony, and transported for seven years. *f. 3.*

And every person who shall take, or discover so that he may be taken, any person so advertised and not surrendering, and cause him to be brought before a judge of the king's bench, or justice of the peace for *London* or *Middlesex* (who shall commit him to *Newgate*), shall receive 500*l.* in one month after execution awarded, from the commissioners of the customs or excise respectively: And if an offender, against whom no such order in council shall have been made, shall himself so discover or apprehend any other against whom an order hath been made; he shall be acquitted of all his own offences for which no prosecution is then commenced, and shall also have his share of the præmium: And if any person shall be maimed or grievously wounded in apprehending such offender; he shall receive 50*l.* over and above such other reward as he may have as apprehender: And if any person shall be killed in apprehending, his executors or administrators shall receive 100*l.* *f. 10.*

But

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But nothing herein shall prevent ministers of justice from taking such offender by the ordinary course of law ; but if he shall be taken before the expiration of the time limited for his surrender, no further proceedings shall be had upon the order made in council, but the offender shall be brought to trial by due course of law. *s. 4.*

And if any offender, before order for his surrender, shall discover two or more accomplices, so as they be convicted ; he shall receive 50 l. for each, and be discharged of all offences for which no prosecution shall be then commenced. *s. 11.*

In the case of *John Harvey, E. 20 G. 2.* The attorney general, suggesting the several particulars to have been complied with as in this act specified, prayed that execution might be awarded according to the said act. The defendant traversed all the facts contained in the suggestion. On which, at another day, the attorney general went into the proof of the several issues.—The several facts touching the laying the information before the justice (*Mr. Burdus*) against the prisoner and others ; his certifying it in due manner to the duke of *Newcastle*, secretary of state ; the duke's laying it before the king in council ; the order of council (which was produced under the seal of the council) requiring the prisoner and others to surrender within 40 days after publication in the *London gazette* ; the transmitting this order to the printer of the gazette ; the publication of it in due time in two successive gazettes ; and the transmitting it to the sheriff of the county of *Suffolk*, in order to its being proclaimed and published as the act directeth,—were well proved. Then the under-sheriff of *Suffolk* and other witnesses were called, to prove the proclaiming and fixing up the order in two market towns near *Beauacre*, the place where the fact is charged in the information taken by *Mr. Burdus* to have been committed. And it appeared on their evidence, that it was proclaimed and fixed up at *Ipswich*, which is 30 miles from *Beauacre* ; at *Hadly*, which is 42 miles from *Beauacre* ; and at *Leofstoft*, which is 5 miles from *Beauacre* ; and at no other places : and that there are five or six market towns nearer to *Beauacre* than *Ipswich* ; particularly *Southwold* 5, and *Beacles* 8 miles.—*Mr. Ford* assigned counsel for the prisoner, insisted that the act had not been complied with. The act indeed doth not say that it shall be in the next market towns, but still it must be in the market towns near the place. And the distance of 30 miles cannot with any propriety be called

called *near*, when it appeareth, that there are at least three market towns within a third part of that distance.— And of this opinion was the court. This, they said, is a very penal law. And it would be of dangerous consequence to give the sheriff a greater latitude, than the legislature intended to give him. Some latitude it did intend to give, and therefore did not confine him to the *next* market towns, because that would have rendered the execution of the act difficult, and subject to great niceties. But the law did not intend to leave the matter wholly to the discretion of the sheriff, and therefore it requireth that it be done in the market towns *near* the place. This word is plainly restrictive of the sheriff's power. It is a guide to his discretion in the execution of the act. And what doth it mean? Not surely the most remote town; nor doth it mean a town comparatively remote, as it is plain from the evidence, *Hadly* and *Ipswich* are.—On the whole; the court without summing up the evidence, directed the jury to find for the king, on all the issues, except those which regarded the proclamations in the market towns near *Beauacre*; and on those to find for the prisoner, which they did. And then the court ordered, that the attorney general take nothing by his prayer. And that the prisoner be remanded to *Newgate*, in order to answer for the original offence he stands charged with in the information taken by Mr. *Burdus*, if the attorney general shall think fit to indict him for it. *Fost.* 51.

Note, This act of the 19 G. 2. c. 34. is but temporary, and seems as to this part relating to the surrender upon proclamation to be expired; because the several acts which have continued the same from time to time do not continue the whole, but only so much thereof as relates to the *punishment* of the offenders, and not to the extraordinary method of apprehending or causing them to surrender. 4 *Black. c.* 12. f. 2.

23. If any persons passing in a publick and avowed manner, with prohibited or uncustomed goods, and armed with pistols, guns, cutlasses, or other offensive weapons, shall molest or resist the officers of the customs or excise, endeavouring to seize the same, by beating, maiming, or wounding them, or any person assisting them; they may oppose force with force: And if any person so resisting the officers be wounded, maimed, or killed; such officers, or persons assisting them in their defence, may plead the general issue, and give this act and the special matter in evidence; and all justices of the peace, and others, before whom

Officers may oppose force with force.

whom they shall be brought, shall admit them to bail.

9 G. 2. c. 35. f. 35.

Dangerously
hurting an offi-
cer, finable.

24. By the 13 & 14 G. 2. c. 11. Where any officer or officers of the customs shall be by any person armed with club or any manner of weapon, forcibly hindred, affronted, abused, beaten, or wounded, to the hazard of their lives, either on board any ship, or on the land or water in execution of their office; every person so abusing any such officer or his deputy, or such as shall act in his aid or assistance, shall by the next justice or other magistrate be committed to prison to the next quarter sessions; and the said sessions shall punish him by fine; not exceeding 100 l. and the offender to remain in prison, till he be discharged by order of the exchequer both of the fine and of the imprisonment, or discover the person that set him on work. f. 6.

By eight or more,
transportation.

25. And by the 6 G. c. 21. If any officer of the customs be forcibly hindred, wounded, or beaten, in the due execution of his office, by any person armed with any manner of weapon, tumultuously assembled by day or night, to the number of eight or more; the offenders shall be transported for any term not exceeding seven years. f. 34, 35.

And if any offender shall in two months after his offence, and before conviction, discover his accomplices so as two be convicted, he shall have 40 l. reward for each, and be acquitted. f. 36.

And if any other person shall in three months discover any offender so as he be convicted, he shall have 40 l. over and above any other reward on account of the run goods. f. 37.

The same to be paid by the receiver general, or cashier of the customs, on producing the judge's certificate. f. 38.

Opposed on ship-
board, transpor-
tation.

26. And by the 9 G. 2. c. 35. more generally it is enacted, that if any officer of the customs or excise, being on board any ship, be forcibly hindred, wounded, or beaten, in execution of his office, either by day or night; the offender shall be transported for seven years. f. 28.

Hundred shall
answer damages.

27. And by the 19 G. 2. c. 34. f. 6. If any officer or other person employed in seizing any goods forfeited for being prohibited or uncustomed, or for not having paid duty, or by virtue of any law to prevent the exportation of goods, or in endeavouring to apprehend offenders against this act, shall be beaten or killed, or the goods seized be rescued; the hundred shall answer damages, and also pay 100 l. to the executors or administrators of such person killed,

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killed, so as the sum for beating exceed not 40 l. nor for the loss of goods 200 l. to be recovered and levied as in cases of robbery by the 8 G. 2.

But no person shall recover damages for such beating or loss of goods, unless he give notice in four days to two inhabitants near, and in eight days make oath before a justice, whether he knew any of the persons concerned, and if he did, he shall be bound over to prosecute; and unless, besides the said notice and recognizance, he give such notice and enter into such recognizance as persons robbed by the 8 G. 2. are directed to give. *id.* f. 7.

And where the offender shall be convicted in six months, the hundred shall not be liable. f. 8.

Also the action against the hundred must be commenced within a year. f. 9.

28. If any action shall be brought for any thing done in pursuance of any act relating to the customs, excise, or salt duties; the defendant, if the plaintiff fails in his suit, shall have treble costs. 5 G. 3. c. 43. f. 47. Treble costs.

29. Offences relating to the customs or excise, made felony by any act, may be tried in any county; but the attainder shall work no corruption of blood, loss of dower or forfeiture of lands. 19 G. 2. c. 34. f. 5. Felonies in relation to the customs may be tried in any county.

30. By the 5 G. 3. c. 43. To prevent collusive agreements between the officers and importers; if any officer of the customs or excise, or other person authorized to make seizures, shall seize any goods as forfeited by this act, or any tea, foreign brandy, arrack, rum, strong waters, or spirits, as forfeited by the 9 G. 2. c. 35. on board any ship or vessel, and shall not seize and prosecute the ship or vessel; or if any such officer shall seize any goods whatsoever, which shall have been unshipped, landed, removed, or carried contrary to law, and shall not also seize and prosecute the boat, vessel, cart, horse, or other cattle, or carriage made use of in removing the same; and shall not discover to the commissioners of the customs or excise the persons concerned in unshipping or receiving such goods, so that they may be prosecuted: such officer shall, instead of the moiety, have only one third of the net produce arising by the sale of such goods, and the remaining two thirds shall be to the king. f. 39. Collusive seizures.

31. By the 5 G. 3. c. 39. Power is given to the officers of the customs and excise, to visit and search ships and vessels, in any harbour or other place belonging to the *isle of Man*, and seize contraband goods there, as they may do in Great Britain. f. 1. Isle of Man, as to customs.

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And no wrought silks, bengals and stuffs mixed with silk or herba, of the manufacture of *Persia*, *China* or *East India*, nor callicoës painted or stained in any of those places, nor any cambricks or *French* lawns, shall be exported to the said island; on pain of seizure by the officers of the customs and forfeiture thereof, and of the goods contained in the same package therewith. *f. 2.*

And the isle of *Man* shall be added to and included in the bond which is now by law required to be given, that such goods shall be duly exported, and not relanded in any part of Great Britain. *f. 3.*

And no foreign spirits shall be imported into the said island, but only such as shall be *bona fide* laden and shipped in Great Britain, and carried thither directly from thence; on pain of forfeiture of such goods, or the value thereof, together with the vessel and furniture. *f. 4.*

And no spirits shall be shipped in *America*, but on condition that the same shall not be landed in the said island. *f. 5.*

And no foreign spirits shall be exported from the said island, or carried coastwise, in any ship less than 100 tuns burden, nor in any cask under 60 gallons (except for the use of the seamen, not exceeding two gallons each); and no wine shall be there imported, or exported, or carried coastwise, in any ship less than 100 tuns burden, nor in any cask less than 25 gallons; on pain of forfeiture of the goods, together with the vessel and furniture. *f. 6.*

And vessels found hovering on the coast, or within three leagues thereof, having prohibited goods on board, (unless in case of necessity by distress of weather,) shall be forfeited, with the tackle and furniture, together with the said goods. *f. 7.*

And no spirits shall be imported from thence into Great Britain, upon any pretence whatsoever; and vessels coming from thence, with spirits (except for the use of the seamen, not exceeding two gallons each) or other prohibited goods on board, found hovering on the coasts of Great Britain or Ireland, or within three leagues thereof, (unless in case of necessity by distress of weather,) shall be forfeited, together with such goods. *f. 8.*

And the seizures may be brought into any port in Great Britain, Ireland, or the said island; and prosecuted there respectively, and disposed in all respects, as in case of seizures made in Great Britain. *f. 9.*

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By the 5 G. 3. c. 43. The inhabitants of the said island may import into Great Britain, bestials, or any goods of the produce and manufacture of the said island (except as above excepted, and except woollen manufactures, beer and ale); without paying any duty for the same, other than is paid for the like in Great Britain: Provided, that the person importing the same bring with him a certificate thereof from the proper officer there; and also make oath at the port of importation, that the goods are the same which were taken on board by virtue of the said certificate. *f. 11.*

But this shall not extend to give liberty to import into Great Britain from the said island any goods of the growth or produce of any foreign nation, which may be in part or fully manufactured in the said island; except linen manufactures made there of hemp or flax, not being the produce of the said island. *f. 12.*

And the bounties on exportation of British and Irish linens, shall be allowed on the like species of linen made in the isle of *Man*, imported into and exported from Great Britain. *f. 13.*

32. Whereas tobacco, rum, and other goods are shipped for exportation to the islands of *Faro* (being part of the dominions of the king of Denmark), with no other intent than fraudulently to reland the same; it is enacted, that no drawback or bounty shall be allowed for any goods exported to the said islands; nor shall any cockpit or clearance be granted for exporting to the said islands any goods prohibited to be worn or used in Great Britain or Ireland. 5 G. 3. c. 43. *f. 31.*

And if any goods shall be entred for exportation, and shall be landed in the said islands; the drawback thereon shall be forfeited; and the exporter, and master of the vessel, and every person concerned in exporting or landing the same, shall forfeit treble value; and the value also, with the tackle and furniture, shall be forfeited, and may be seized and prosecuted by any officer of the customs or excise; and the penalties and forfeitures may be recovered as any forfeiture incurred by any law of the revenue, and distributed half to the king (after deducting the charges of prosecution), and half to such officer who shall sue. *f. 32.*

And the said islands of *Faro* shall be added to and included in the oath, upon all debentures for goods exported, whereon the exporter is to swear, that such goods

Excise in general.

are not landed or intended to be landed in Great Britain or Ireland. *f.* 33.

II. Of the excise in general.

Head office, and
commissioners.

1. One principal head office of excise shall be kept in *London*, or within ten miles thereof, to which all other offices in the kingdom shall be subordinate and accountable; which said office shall be managed by such commissioners, as the king shall appoint. 12 *C. 2. c. 24. f.* 46. 5 *W. c. 20. f.* 16.

Subcommis-
sioners, and
other officers.

2. And all places within the bills of mortality shall be under the immediate care and management of the said head office; and such and so many subordinate commissioners, and subcommissioners, and other officers shall be appointed by the king in other places, as he shall think fit. 12 *C. 2. c. 24. f.* 48.

Office when to
be kept open

3. And the excise office in all places where it shall be appointed, shall be kept open from eight in the morning, till two in the afternoon. 23 *G. 2. c. 26. f.* 12.

Office in market
towns.

4. And the commissioners or subcommissioners shall appoint under their hands and seals, such persons as they shall think needful in each market town, to be there upon every market day, in some known and publick place, for receiving entries and duties, and performing all other things touching the revenue of excise: And if such office shall not be so kept in each market town, the commissioners or others neglecting or refusing, shall for every market day forfeit 10*l.* And such person as shall come to such market town to make his entry or payment, and tender the same accordingly, and be able to prove such tender by oath of one witness, shall not be liable to any penalty for such weekly or monthly entries or payments, as should have been made or paid on such market day. 15 *C. 2. c. 11. f.* 10.

Collections, dis-
tricts, and other
divisions.

5. The kingdom of *England* and *Wales* (exclusive of the bills of mortality) is divided into 49 *collections*; some called by the names of particular counties; others by the names of great towns, where one county is divided into several collections, or where a collection comprehends the contiguous parts of several counties: Every collection is subdivided into *districts*, within each of which there is a *supervisor*; and each district is parcelled into *out rides* and *foot walks*, within each of which there is a *gager* or surveying officer. *Gilb. Exch. Append.*

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6. The commissioners or subcommissioners, in their respective circuits and divisions, shall constitute under their hands and seals, such and so many gagers as they shall find needful. 12 C. 2. c. 24. s. 33. Gagers.

In order to which, he who would be made a gager, must procure a certificate, that he is above 21, and under 30 years of age; that he understands the four first rules of arithmetick; that he is of the communion of the church of England; how he has been employed, or what business he hath followed; that he is not incumbered with debts; whether single or married; and if married, how many children he has, for if he has above two, he cannot (by the rules of the office) be admitted. *Gilb. Exch. App.*

He must also nominate two persons to be his sureties, and it must be certified that they are of sufficient bility; and that the said certificate is of his own hand writing: Such certificate, written by him, must be signed by the supervisor of excise where the party applying lives. *id.*

At the bottom of the certificate must be his affidavit, that neither he, nor any else to his knowledge, hath directly or indirectly, given or promised to give any treat, fee, gratuity, or reward, for his obtaining or endeavouring to obtain an order for his being instructed. *id.*

When an order for instruction is granted, it is directed to an experienced officer, who receives such person as his pupil; and the like books as officers have, being delivered to such pupil, he goes with and attends the officer who instructs him, and takes surveys, and in his own books makes the like entries as if he was an officer, until the instructor certifies that he is fully instructed. *id.*

After he is thus certified for, and until he is employed, he is called an *expectant*, being to wait till a vacancy happens. *id.*

7. No person shall be capable of intermeddling with any office relating to the excise, until he shall before two justices in the county where his employment shall be, or before a baron of the exchequer, take the oaths of allegiance and supremacy, together with this oath following; Officer's oath.

You shall swear to execute the office of——truly and faithfully, without favour or affection, and shall from time to time true account make and deliver to such person or persons as his majesty shall appoint to receive the same, and shall take no fee or reward for the execution of the said office, from any other person than from his majesty, or those whom his majesty shall appoint in that behalf. 12 C. 2. c. 24. s. 47.

Excise in general.

And the justices shall certify the taking of such oath, to the next quarter sessions, there to be recorded. *f. 48.*

And the officer shall also enter a certificate thereof with the auditor of the excise: And if any such person shall act before he hath taken the said oaths, and entered his certificate with the auditor aforesaid, he shall forfeit 50 l. a month. *15 C. 2. c. 11. f. 27.*

And he shall also, within six months after his admission to the office, take the oaths and subscribe the declaration against transubstantiation, at the quarter-sessions; in like manner as other persons admitted to offices.

Officers general
duty.

8. The business of the *supervisor* is to be continually surveying the houses and places of the persons within his district liable to duties; and to observe and see whether the officers duly make their surveys, and make due entries thereof in their books and in their specimen papers; and every supervisor is in his own book to enter what himself does, each day and part thereof; and also set down the behaviour good or bad, the diligence or negligence, of the several officers of his district; and at the end of every six weeks, to draw out a diary of every day's business, and of the remarks made each day of the several officers in his district, and to transmit such diary at the end of every six weeks to the chief office. *Gilb. Exch. Append.*

Each commissioner takes and peruses a proportion of these diaries, and when he meets with any remarkable complaint against any officer, he communicates it to the rest; who thereupon come to an agreement, either to *admonish, reprimand, reduce or discharge*. For small faults, officers are admonished; for great ones, reprimanded; for greater, reduced; but for the greatest, they are discharged. The commissioner who peruses the diary, writes in the margin, admonish, reprimand, or as the case is. *id.*

These diaries, after having been thus written upon, are delivered to the clerk of the diaries, who in a book, called the reprimand book, places the admonitions, reprimands, and the like, to each officer's account, and writes every offender word thereof. Which reprimand book is resorted to, upon discovering new faults; and if it is there found, that the officer has before been admonished and reprimanded so often, that there are no hopes of his amending, he is then discharged. The said book is likewise resorted to, when application is made for advancing or preferring an officer into a better post. Frequent admonitions or reprimands are a bar to preferment, unless they are of old standing; but if for three years last he stands pretty clear of admonitions and reprimands, those of the elder date are not much regarded. *id.*

The

Excise in general.

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The collector's business is, every six weeks to go his rounds; and in the intervals of rounds, he is to be assisting in prosecuting offenders before the justices; he is also to peruse the supervisor's diaries, and where he finds an officer complained of, is to examine him and the supervisor, and having heard both, is in the margin to write his opinion of each fact; he is also to have an eye how the supervisors and officers of his collection perform their duties; and from the vouchers he transcribes into his book the charge on each particular person in his collection. *id.*

For faults, gagers are reduced, either to be only assistants, or from foot walks to out rides; supervisors are reduced to be again only gagers; and collectors are reduced to be supervisors. *id.*

In some instances, discharged officers, after having for a competent time been thereby kept out of pay, and again restored; but if twice discharged, are never again restored, unless one of the discharges appears to have been occasioned by a misrepresentation of the case. *id.*

9. In the act of the 24 G. 2. c. 40. There is a general clause, which has a controlling influence on all that hereafter follows in this large title; which is this: *All fines, penalties, and forfeitures, imposed by this or any other act relating to the duties of excise, or other duties under the management of the commissioners of excise, shall be sued for, levied, recovered, or mitigated by such ways and means, as any fine, penalty, or forfeiture is or may be recovered or mitigated by any law or laws of excise, or in the courts at Westminster, and shall be half to the king, and half to him that shall inform or sue.* f. 33.

Penalties by the
excise laws.

10. That is to say, *If it is within the limits of the chief office in London, the offences shall be determined by the commissioners (or any three of them, 1 G. 2. st. 2. c. 16. s. 4, 5.) or, in case of appeals, by the commissioners of appeals: In all other places, they shall be heard and determined by any two or more justices of the peace, residing near to the place where such forfeitures shall be made, or offence committed: And in case of neglect or refusal of such justices by the space of 14 days next after complaint made, and notice thereof given to the offender; then the subcommissioners may hear and determine the same; And if the party find himself aggrieved by the judgment given by the said subcommissioners, he may appeal to the next quarter sessions, whose judgment therein shall be final. Which said commissioners for appeals, and chief commissioners for excise, and all justices of the peace, and subcommissioners aforesaid, are required upon any complaint or information exhibited*

By two justices.

Excise in general.

and brought, of any such forfeiture made or offence committed, to summon the party accused, and upon his appearance or contempt to proceed to the examination of the fact, and on due proof made thereof, either by the voluntary confession of the party, or by the oath of one credible witness, to give judgment or sentence, and to issue warrants under their hands, for levying the same on the goods and chattels of the offender, and to cause sale to be made thereof, if not redeemed in 14 days; and for want of sufficient distress, to imprison the party offending till satisfaction be made. 12 C. 2. c. 24. s. 45.

Residing near] Mr. Shaw who seems to have taken some pains on this article (and after whom Mr. Barlow hath copied without owning it) saith hereupon, that where the next justices are impowered to proceed in any matter, they and no other ought in such case to act; but where it is only directed, that the justices residing near shall do such a thing, those words are not restrictive, but only directory, and any justices, altho' not the next justices, may proceed therein. Shaw Exc.

But where the act says, that any two justices residing near to the place where the forfeiture shall be made, or the offence committed, shall hear and determine the matter, it doth not intend that the justices of a county at large dwelling near to a town corporate, which hath justices of its own, and an exclusive charter, shall have power to intermeddle with regard to offences committed within such town corporate; but only to vest the jurisdiction in justices of counties, cities, and places, with respect to their local jurisdictions within such places. T. 14 G. 2. Talbot and Hubble. Str. 1154.

Upon any complaint or information exhibited] By these words it is not necessary that the information be exhibited in writing; but if it is a verbal information, the justices ought to make a record thereof, and of the time and place, when and where exhibited, which must be expressed in the present, and not in the time past: But to save the justices that trouble, it is usual for the informer to prepare his information in writing; and by way of preface thereto, to make a memorandum of the time and place of the laying such information, leaving therein blanks for the names of the justices, and the day and month and year and place when and where laid; and when those blanks are filled up by direction or consent of the justices, then it becomes a record made by them. The mentioning the place where the
in.

information is laid, is, that it may appear that the prosecution was in the proper county; and therefore though it may happen, that for laying the information, the prosecutor may be obliged to attend one justice in one town, and another justice in another town, it must not be mentioned, that the information was laid at both towns, for that would be absurd; but in such cases it is usual to express that the information is laid at the town where the hearing is intended to be. *Shaw Exc.*

Proceed to the examination of the fact] And by the 9 G. 2. c. 35. it is enacted, that in trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. *f. 34.*

Give judgment] Altho' it hath been said, that whatever is recorded by the justices or their order, ought to be expressed in words of the present time and tense; yet that doth not make it necessary, nor is it indeed practicable, that all that is to be so entered should actually be entered at the instant of time when such judgment is given; for such entering the whole at that time would hinder the dispatch of business, and delay the hearing of causes, and therefore may be done at any convenient time after; which if it be agreeable with, and according to such short minutes or notes as are then taken by such justices, it will be as authentick as if it had been entered at the instant of time in which such order was made, or judgment was given. *Shaw Exc.*

And to issue warrants under their hands] Altho' it is here only directed, that the warrant shall be under the *hands* of the justices; yet since it is generally implied in all warrants, that they are both under *hand* and *seal*, it is safe at least, if not necessary, that this warrant also amongst the rest, be both *signed* and *sealed*.

For levying the same on the goods and chattels of the offender] And in case where the offender shall remove out of the jurisdiction, it is enacted by the 18 G. 2. c. 26. *f. 13.* and 5 G. 3. c. 43. *f. 26.* that the commissioners and justices respectively, within whose jurisdiction any person charged by any act concerning the duties of excise, or any other duties under the management of the commissioners of excise, or who hath committed any offence against any of the said acts, shall be found, may summon, hear, adjudge, and determine, and issue any process or warrant, in the same manner as before they might have done in
case

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case of such offences committed within their jurisdiction; and if they shall, upon any judgment given by them, issue a warrant of distress, and the person authorized to execute the warrant shall make a return thereto that no sufficient distress can be found, it shall be lawful for the said commissioners and justices respectively, within whose jurisdiction the party shall at any time be found, against whom such warrant shall have been issued, upon producing to them such warrant, and return thereof, to commit such offender to the next county gaol till satisfaction be made.

And to cause sale to be made thereof if not redeemed in 14 days] But by the 27 G. 2. c. 20. the justices may not order the distress to be detained more than eight days nor less than four.

For want of sufficient distress] Mr. Shaw and Mr. Barlow, are of opinion, that where there are some goods, but not sufficient for satisfying the judgment, yet those goods may be applied for that purpose so far as they shall extend, and the defendant shall be imprisoned for the residue; which may seem hard sometimes, when the defendant shall perhaps satisfy nearly the whole sum, and moreover be imprisoned as much as if he had paid nothing; and it hath been adjudged in other cases, that a man shall not first pay part, and then be imprisoned for the residue, but shall either pay the whole, or be imprisoned for the whole: but perhaps the distinction may be this; where there is a limited time of imprisonment, as for instance, three months, there the defendant shall not pay part, and then be imprisoned the whole three months, which would be to punish him both ways; but where the imprisonment is till the penalty shall be paid, there the payment of the penalty is the thing chiefly regarded, and the imprisonment is not intended as a punishment, but as a mean to compel the payment of the penalty, and if part of it is paid already, the enlargement may come the sooner, by payment of the residue.

Imprison the party till satisfaction be made] But before any warrant can be made to arrest and imprison the person of the defendant, there must be first a warrant to seize the utensils in custody of such offender, and the offender's goods; and that warrant must be returned: all which must be done, before any warrant can be regularly made, to arrest and imprison the defendant's person. Which method ought to be observed, tho' perhaps it may be well known by or sufficiently proved before the justices, that all the utensils and all the defendants goods are carried off; for the law being in all cases very tender of depriving men of their

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their liberty, it is necessary that all possible means should be used to levy the money on such goods, before the person of the defendant be imprisoned. But if a warrant to seize the utensils and the goods, be made and delivered to an officer to be executed; and if such officer, having made diligent search, cannot find any such, then a warrant may be made to arrest and imprison the person of the defendant. But then there ought to be a duplicate made of such warrant; because the keeper of the prison cannot regularly receive the offender without a warrant, and the officer ought also to have and keep a warrant for his own justification. *Shaw. Exc.*

11. By the 7th & 8th W. c. 30. The commissioners and justices may summon witnesses, to appear before them at a certain day, time, and place, to be inserted in such summons, and to give evidence; and in case of neglect or refusal to appear, or if upon appearance any shall refuse to give evidence, he shall forfeit 20 *l.* *s.* 24. Summoning witnesses.

And a summons left at the house or usual place of residence, or with the wife, child or menial servant of the person accused, shall be as effectual, as if delivered to the person himself. 32 G. 2. c. 17. *s.* 1.

And in all cases relating to the excise, or to any of the duties under the management of the commissioners of excise (except where particular provisions are made for summoning offenders, or for condemning of seizures made from persons unknown); the leaving such summons at the house, work-house, shop, cellar, vault, or usual place of residence of such person, directed to him by his right or assumed name, shall be as effectual as if delivered to him in person, and as if directed to him by his proper name. *s.* 2.

12. If upon trial, any question shall arise, concerning the keeping of any office of excise, or concerning any person's being an officer; proof shall be admitted of the actual keeping of such office, or of such person's actually exercising such office, without proving or producing the commission. 6 G. c. 21. *s.* 24. 11 G. c. 30. *s.* 32. Officer on trial need not produce his commission.

13. If on trial any dispute shall arise, whether the excise or other inland duties have been paid for any foreign goods seized; the proof shall lie on the owner, and not on the officer. 12 G. c. 28. *s.* 8. Proof to lie on the owner.

14. One or more justices shall have power to administer an oath to any person skilled in the value of goods, vessels, or carriages, mentioned to have been seized in any information exhibited before the justices, to view the same, and make return of the species, quantity and value; and after condemnation. Sworn valuers.

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condemnation, the said goods shall be sold where the commissioners shall think proper. 12 G. c. 28. s. 16.

Mitigation.

15. *The justices, commissioners, or subcommissioners, respectively, where they shall see cause, may mitigate, compound or lessen the forfeiture, penalty or fine; so as the same be not made less than double the value of the duty of excise which ought to have been paid, besides the reasonable costs and charges of such officers, or others as were employed therein, to be to them allowed by the said justices.* 12 C. 2. c. 24. s. 46.

Mitigate] But it is not necessary in the mitigation, to mention or distinguish so much for the offence, and so much for the charges; but after the justices have agreed what sums to allow for the charges, the best way will be to add those two sums together, and make their mitigation to such sum, as both when added together do amount unto: as suppose the justices do intend, that the defendant shall pay 10 l. for the offence, and 40s. for the charges, the best way will be to make their mitigation to 12 l. without particularly mentioning that 10 l. thereof is for the offence, and that the 40s. is for the charges; for in all cases it is wrong to insert in judgments more words or particulars than are necessary; and it is more particularly wrong in these cases, because the mentioning such unnecessary particulars may give a handle for cavils and disputes. *Shaw. Exc.*

Costs and charges] Generally the law doth not allow any costs or charges to be recovered on any penal law; and therefore to intitle the prosecutor to costs, over and above the penalty, expresse words for that purpose are necessary in an act of parliament. *Shaw Exc.* But by the 27 G. 2. c. 20. the constable out of the money arising from the sale of the distress, may detain his reasonable charges of taking, keeping, and selling the same.

Appeal.

16. There is no appeal directed in the said statute of 12 C. 2. from judgments given by the justices of the peace; for whereas it is enacted, in the said statutes, that *if the party find himself aggrieved by the judgment given by the subcommissioners, he may appeal to the next quarter sessions*, these words, not being general, or such as may be applied equally, as well to the judgments given by the justices, as to judgments given by subcommissioners, they must be understood as limited and restrained to such judgments only as are given by subcommissioners, in whom the parliament (it seems) did not so intirely confide as in the justices, but have made the aforementioned distinction between the judgment

ment of the one and of the other ; which must be observed and pursued ; and therefore, generally, there lies no appeal to the quarter sessions from the judgment given by the justices, in matters relating to the excise. *Shaw Exc.*

Nevertheless in some particular instances, such power is given by subsequent statutes ; which will be mentioned under the special heads in this title hereafter following.

By the 15 C. 2. c. 11. No appeal in any cause of excise shall be admitted, till the appellant hath deposited the single duty with the commissioners or subcommissioners, and given security to the commissioners of appeal, or justices of the peace, where the cause is to be finally adjudged, for such forfeiture as was adjudged against him ; and if upon appeal the judgment be reversed, they shall restore the duty so deposited, or so much thereof as shall be adjudged on the appeal, and the party originally prosecuting shall pay double costs ; but if the judgment be affirmed the party appealing shall pay the like costs to the commissioners. *f. 19.*

And by the same statute, all differences and appeals about the excise, shall be heard in the proper county, and not elsewhere. *f. 22.*

And by the same statute, appeal, within *London*, and the limits thereof, shall be within two months after judgment, and notice given or left at the dwelling-house of the party ; in all other places, in four months, and not otherwise. *f. 26.*

17. It is generally provided by divers statutes, that no certiorari shall be allowed to supersede the justices proceedings. 12 C. 2. c. 24. *f. 50.* 22 & 23 C. 2. c. 5. *f. 14.* 6 G. c. 21. *f. 22.*

18. Persons sued for any thing done on any act relating to the excise, or other duties under the management of the commissioners of excise, may plead the general issue ; and have treble costs. 18 G. 2. c. 26. *f. 15.*

19. Offences relating to the excise made felony by any act, may be tried in any county ; but the attainer shall work no corruption of blood, or forfeiture of lands. 19 G. 2. c. 34. *f. 5.*

20. Any alehousekeeper harbouring an absconded person, against whom a process of arrest hath issued, for any offence against the laws of excise or of the customs, after six days notice of such absconding in two successive gazettes, and writing fixed on the door of the parish church where he last dwelt, shall forfeit 100*l.* and have no licence for the future. 9 G. 2. c. 35. *f. 30, 31.*

Landing foreign
exciseable liquors
before duty paid.

21. No foreign liquors, for which excise ought to be paid shall be landed, before entry made with the officer or collector of excise, or before the excise shall be paid; and every warrant from the officer of the customs, for landing such foreign liquors, shall be signed by the officer or collector of excise, in the port; on pain that the liquors landed otherwise, or the value thereof, shall be forfeited, to be recovered of the importer or proprietor. 22 & 23 C. 2. c. 5. f. 9.

Exciseable li-
quors carried
coastwise.

22. No person bringing any exciseable liquors (except beer, ale, cyder, perry and metheglin) into any place by coast cocquet, tranfire, or certificate, nor any person to whom the same shall be consigned, shall land the same, without being entred with the officer of excise where landed; on pain of double value. 15 C. 2. c. 11. f. 18.

Concealing ex-
ciseable goods.

23. If any person shall conceal, or suffer to be concealed, any goods liable to the duties of excise, and inland duties; he shall (whether he claims any interest in them or not) forfeit the same, and treble value. 11 G. c. 30. f. 16.

Constable to be
assisting.

24. If on request made by any officer of excise, to a constable to go along with him, and to be present at the doing of any thing, at the doing whereof his presence shall be necessary by any statute, he shall neglect or refuse or shall not go along with him, and be present at the doing thereof; he shall forfeit 20 l. 11 G. c. 30. f. 31.

Obstructing of-
ficer.

25. If any person shall oppose, molest, hinder, or obstruct any officer of excise, in the due execution of the powers given him by any act relating to the duties of excise; he shall forfeit 10 l. 6 G. c. 21. f. 7.

And actions of assault upon any officer of excise, may be tried in any county. 9 G. 2. c. 35. f. 26.

Further penalties for obstructing, wounding, or killing officers, in the case of run goods, have been inserted before, in treating of the customs.

Officer not to be
a dealer.

26. If any officer of the excise or customs shall deal in coffee, tea, brandy, or other exciseable liquors; he shall be incapable to hold any office in the revenue, and forfeit 50 l. 12 G. c. 28. f. 7.

Officer taking a
bribe.

27. No sworn gager, or other officer, shall take any bribe, for any matter relating to the excise; on pain of 10 l. 15 C. 2. c. 11. f. 16.

And a further penalty upon such officer, is inflicted, in divers instances hereafter mentioned.

And by the 11 G. c. 30. If any person liable to the duties of excise, or any other duties under the management
of

of the commissioners of excise, shall give or offer to any officer of the said duties any bribe, gratuity, or reward, in order to induce him to omit his duty, or to do contrary to it; he shall forfeit 500 l. *s.* 40.

28. No collector, supervisor, gager, or other person concerned in charging, collecting, levying, or managing the duties of excise, or any part thereof, shall by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of a member of parliament; on pain of 100 l. half to the poor, and half to him who shall sue in the courts at *Westminster*; and moreover he shall be incapable to hold any office of trust under the king. 5 *W. c.* 20. *s.* 48. Officer meddling in elections.

III. Of the several goods in particular, under the management of the commissioners of the customs and excise: *viz.*

Ale, beer, cyder, perry, mum, metheglin, mead, sweets, verjuice, and vinegar; candles; coaches; coffee, tea, and chocolate; glass; hops; leather; linen cloth and silks; malt; paper; plate; salt; soap; spirituous liquors; starch and hair powder; wire.

I. *Ale, beer, cyder, perry, mum, metheglin, mead, sweets, verjuice, vinegar.*

1. By the several acts relating to that purpose, there shall be paid by the importer before landing, for every barrel of beer or ale imported, in the whole the sum of 18 s. Duty on ale and beer imported.

2. By the several acts there shall be paid in the whole, for every barrel of beer or ale above 6 s. a barrel, brewed by the common brewer, or any other person who shall sell or tap out beer or ale, the sum of 8 s. and for every barrel of 6 s. a barrel or under, the sum of 1 s. 4 d. On home ale and beer.

3. For every ton of cyder or perry imported shall be paid 22 l. 10 s. And if they are imported by foreigners they shall pay 30 s. more. Duty on cyder and perry imported.

4. By six several acts, for every hogshead of cyder and perry made in Great Britain, and sold by retail, there shall be paid by the retailer the sum of 6 s. 8 d. And by the 12 *An. st.* 1. c. 2. 4 s. more to be paid by the first buyer or retailer. And by the 1 *G.* 3. c. 3. 4 s. more, Duty on home cyder and perry.
over

Excise. (*Ale, &c.*)

over and above all other duties payable for cyder and perry sold by retail. And by the 6 G. 3. c. 14. 6s. more.

And for every hoghead which shall be set or consigned to any factor or agent, who shall receive the same to sell or dispose of, 16 s. 8 d. to be paid by such factor or agent. 6 G. 3. c. 14. s. 4.

And every person who shall receive into his custody or possession any cyder or perry, to be by him sold or disposed of, shall be deemed to be a factor or agent; unless he make proof, that such cyder or perry was made from fruit of his own growth, and not from bought fruit; or unless it appear by certificate of the officer of excise accompanying the said cyder or perry, that the duties have been charged upon the same. s. 5.

Provided, that if any cyder or perry shall be received by any factor or agent, dealer or retailer, for which it shall appear by certificate that the duties have been charged; such person shall not be charged with the payment of such duties charged as aforesaid, on receiving such cyder or perry into his stock, or on the decrease thereof. s. 6.

Provided also, that if any factor or agent shall (during the continuance of the present malt act) be charged with and pay the duty of 4 s. a hoghead chargeable on him as the receiver thereof; he shall stand discharged of 4 s. part of the said 16 s. 8 d. s. 7.

And every such factor or Agent, taking any cyder or perry into his possession, shall, three days before he shall begin to dispose of the same, make entry in writing at the next office of excise, of his name, and place where the cyder or perry is to be kept: And if he shall make use of any warehouse or other place, without having made such entry; he shall forfeit 50 l. And every such factor or agent shall be liable to all the regulations, which any dealer in or retailer of cyder and perry is liable to by this or any other act now in force, for managing the duties on cyder and perry. s. 9.

And for every hoghead of cyder and perry, which shall be made and sold in Great Britain, by any dealer in or retailer thereof, from fruit of his own growth shall be paid a duty of 6 s. by such dealer or retailer s. 10.

And every Person who shall buy any cyder or perry, or any fruit to make into cyder or perry, and shall sell any cyder or perry so bought or made, by the hoghead or any greater or lesser measure; or shall sell any cyder or perry

perry in less quantity than 20 gallons at a time, whether the same be made from fruit of his own growth or from bought fruit; shall be deemed a dealer in and retailer of cyder or perry. *f. 11.*

Provided nevertheless, that when such dealer in or retailer of cyder or perry made from fruit of his own growth, shall sell the same to any other dealer or retailer, who shall purchase the same to sell again; such purchaser, receiving the same with a proper certificate of the duties having been charged, shall not be charged with the said additional duty of 6*s.* a hogshead imposed by this act on cyder and perry sold by retail: And if the cyder or perry, made by such dealer or retailer from fruit of his own growth, shall be sold by the maker thereof in less quantity than 20 gallons at a time, such dealer or retailer shall not be charged with the said additional duty. *f. 12.*

And every such dealer in and retailer of cyder or perry made from fruit of his own growth, shall be liable to all the regulations which any dealer in or retailer of cyder or perry is liable to by this or any other act now in force for managing the duties on cyder or perry. *f. 13.*

And for preventing disputes that may arise touching charging the duties on cyder and perry; it is declared, that cyder or perry made in Great Britain, in no case whatsoever shall pay or be chargeable with more than 16*s.* 8*d.* a hogshead. *f. 14. (10 G. 3. c. 2. f. 22.)*

And to prevent frauds being committed by dealers and retailers, or factors and agents, in ordering quantities to be removed immediately from the maker to the persons to whom they are consigned by such dealers and retailers, factors and agents, without coming into the possession of such dealers, retailers, factors, or agents, whereby the duties are prevented from being charged; it is enacted, that if any such dealer or retailer, factor or agent, shall cause such cyder or perry so to be removed from the maker to the person contracting for the same, without the duties having been first charged, and without a certificate from the officer of excise (which he shall give without fee) signifying the quantity, and number of casks or other package, and that the duties have been charged, he shall forfeit 5*l.* *f. 15.*

Provided always, that the said duties shall be drawn back on distillation into low wines and spirits: And if such cyder or perry, having paid the duties, shall afterwards, by being unfit for sale as cyder or perry, be charged with the duties on vinegar; three commissioners

- of excise, or two justices, on proof thereof, shall discharge the duties thereon imposed by this act. *f. 16.*
- Duty on mum. 5. For every barrel of mum imported shall be paid the sum of 25*s.* And moreover by the 12 *Ann. st. 1. c. 2.* and 13 *G. c. 7.* for every barrel of mum made or imported, over and above all other duties, shall be paid by the maker or importer, 10*s.*
- Duty on metheglin and mead. 6. For every gallon of metheglin or mead, sold by retail or otherwise, shall be paid by the maker 11*d.*
- Duty on sweets. 7. For every barrel of liquor made for sale, by infusion, fermentation, or otherwise, from fruit or sugar, mixed or unmixed with other ingredients, commonly called sweets or made wines, shall be paid 12*s.* 10 *G. 2. c. 17. f. 2.* But this shall not extend to wines made of *British* grapes. *f. 7.*
- Duty on verjuice. 8. Verjuice made for sale, shall pay as cyder and perry. 7 & 8 *W. c. 30. f. 28.*
- Duty on vinegar imported. 9. For every tun of vinegar imported shall be paid 13*l.* and if imported by strangers 30*s.* more. And by the 18 *G. 2. c. 9.* and 3 *G. 3. c. 12.* 16*l.* more for *French* vinegar, and other vinegar 8*l.*
- Duty on home vinegar. 10. For every barrel (at 34 gallons to the barrel) of vinegar, vinegar beer, or liquors preparing for vinegar, made for sale, shall be paid 11*s. 1d.*
- Note; This shall extend to vinegar made for pickles, but not to vinegar for making white lead. 8 *Ann. c. 7. f. 4, 5.*
- And all stale beer, returns of beer or ale, cyder, verjuice, or any other liquors proper to be made into vinegar, which shall be found in the possession of any common vinegar maker, (except such as are to be drank in his family, and which shall be kept separate for that purpose) shall be deemed vinegar, or liquors preparing for vinegar. 10 & 11 *W. c. 21. f. 11.*
- Notice and entry of vessels and places for making the same. 11. By the 15 *C. 2. c. 11.* No common brewer, inn-keeper, victualler, or other retailer of beer or ale, shall without first giving notice at the next office of excise, or to the commissioners or subcommissioners, or one of them, erect, alter, or enlarge, any tun, fat, back, cooler, or copper, and make use thereof for brewing or making any beer, ale, or worts; on pain of 50*l.* And every other person, in whose occupation any house, outhouse, or other place shall be, where any such private tun, fat, back, cooler, or copper shall be found, shall also forfeit 50*l.* And the same, together with all beer, ale, or worts therein, shall be taken up, seized, and forfeited. *f. 1.*
- And

And by 5 G. 3. c. 43. If any common brewer shall alter the position of any tun, batch, float, cooler, or copper, after the same hath been set up and fixed, without first giving notice thereof in writing to the officer; or shall place any boards, stone, wood, or any other materials at the dipping place; or shall by any other means prevent or hinder the gager from taking true dips and gages of beer, ale, or worts; he shall forfeit 20 l. *f. 25.*

And the officer of excise in the day time, and in the presence of a constable, where he shall have just suspicion, that any private back, tun or other concealed vessel or receptacle are used by any brewer, maker, or retailer of exciseable liquors, on request first made, and cause declared, may break open the door, or any part of his brewhouse, warehouse, or other room in his possession, and enter, and break up the ground in such house or room, or ground near adjoining in his possession, to search for such back, tun, or other vessel, or any pipe or conveyance leading thereto; and if he finds any private pipe or other conveyance, he may search and follow the same, and if it shall lead into any ground, house, or place in the possession of any other person, on like request, and with a constable, he may enter the same, and break open the ground, or any part of the house if occasion shall be, to follow such private pipe, in order to find out such concealed back, tun, or vessel, making good the ground or house so broken up, or giving reasonable satisfaction to the owner: And if any person shall oppose such officer, he shall forfeit 20 l. *7 & 8 W. c. 30. f. 27.*

And if any *vinegar maker* shall without giving such notice, use any storehouse, warehouse, cellar, or other place for making or keeping any vinegar, vinegar beer, or liquors preparing for vinegar; he shall forfeit 50 l. *10 & 11 W. c. 21. f. 14.*

In like manner, every dealer in and retailer of *cyder* and *perry*, and other person receiving into his custody either of them for sale, and every person who shall buy any fruit to make into cyder or perry for sale, shall make entry of his storehouses, cellars, and other places, at the excise office within the district; on pain of 50 l. *1 G. 3. c. 3. f. 21.*

So also, the maker of *sweets* for sale shall first give such notice, of his name and place of abode, and of the rooms and places he intends to use for making or keeping of sweets or made wines; on pain of 20 l. *10 G. 2. c. 17. f. 4.* And any person who shall sell or use any

the materials abovementioned, in making of wines, and in whose custody above two gallons shall be found, shall be deemed a maker of sweets for sale. 10 & 11 *W. c.* 21. *f. 5.*

Private pipes.

12. No common brewer shall keep any pipe or stop cock under ground, or any other private conveyance, by which any beer, ale, or worts may be conveyed from one tun or brewing vessel to another, or into any other place, nor shall have any hole in any tun, batch, or float, by which any beer, ale, or worts may be conveyed into or out of the same; on pain of 100 l. 8 & 9 *W. c.* 19. *f. 4.*

And the excise officer in the day time, and in presence of a constable, on request made, and cause declared, may break up the ground in any common brewhouse, or the ground near adjoining, or any wall, partition, or other place, to search for any such private pipe, or other conveyance, and on finding may follow the same, and break up the ground, house, wall, partition, or other place, thro' or into which the same shall lead, and break up or cut such pipe or other conveyance, and may turn any cock to try whether it can convey as aforesaid. *f. 5.*

And if on search no such pipe or other private conveyance shall be found, the officer shall make good the ground, wall or other place so broken up, or make satisfaction to the owner; And if any person shall oppose such officer, he shall forfeit 50 l. *f. 6.*

But any common brewer may use any pipes, stop-cocks, or other conveyances above ground, which are publick and in open view, for letting his worts out of his copper into his publick backs or coolers; and out of the same into his tuns, batches, or floats; or out of the tun into his casks. *f. 7.*

Private cellar.

13. No common brewer, inkeeper, victualler, or other retailer of beer or ale, shall use or keep any private storehouse, cellar, or other place for laying of any beer or ale, or worts, in cask; on pain of 50 l. and every other person in whose occupation any such place shall be, shall also forfeit 50 l. 15 *C. 2. c. 11. f. 1. 1 W. st. 1. c. 24. f. 11.*

Private person
sustaining liquors
to be brewed in
his house.

14. If any person inhabiting in a market town, city or town corporate, or parts adjoining to a city or town corporate, where there is a common brewhouse, having and lawfully using any private brewing vessels for making beer or ale to be consumed in his own private family, shall permit any beer, ale, or worts to be brewed in his house,

house, or other place thereunto adjoining, other than for his own family, servants, labourers, or to others by way of charity, hospitality, or free gift; or shall lend out any of his brewing vessels, other than which are moveable and unfixt, he shall forfeit 50 l. 22 & 23 C. 2. c. 5. f. 10.

15. The gager shall at all times, as well by night as by day (and if by night, then in presence of a constable) be permitted upon his request to enter the brewhouse, and all other houses and places belonging to or used by any person brewing of beer, or by any retailer of beer, ale, worts, perry, cyder, or metheglin; and to gage all coppers, fats, and vessels in the same; and to take an account of all such liquors brewed or made therein; and thereof shall make return in writing to the commissioners, leaving a true copy of such return under his hand with such brewer, maker, or retailer; which return shall be a charge upon such brewers, makers or retailers. 12 C. 2. c. 24. f. 33.

Gager to enter and take account.

And if any brewer shall bribe the gager to make a false return, he shall forfeit 10 l. and the officer taking the bribe shall also forfeit 10 l. 15 C. 2. c. 11. f. 16.

And if any such common brewer, maker, or retailer shall refuse to permit such gager to enter his brewhouse or other place aforesaid, or to gage or take account of his vessels or liquor aforesaid, he shall be forthwith forbidden by the gager to sell, carry out, or deliver to any of his customers, any beer, ale, or other the liquors aforesaid; and if he shall after such warning given, sell, carry, or deliver out the same, or any part thereof, not having paid the duty of excise, he shall besides the forfeiture of double value, forfeit also the sum of 10 l. 12 C. 2. c. 24. f. 33.

And by the 7 & 8 W. c. 30. If any common brewer, inkeeper or victualler, shall on request or demand made by the gager in the day time, or in the night in presence of a constable, refuse to permit him to come into his house, brewhouse, or other place used by him; or being entred, shall refuse him to stay in the brewhouse, whilst his guile is brewing, and quietly gage and take an account of the several worts as they are brewed off, and let into his backs and tuns, and to see their strong and small drink cleansed and carried out without mixture, and to take an account of the goods in the mess tun, or the quantity of malt from which such worts are made; he shall forfeit 20 l. and the prosecutor shall not be obliged

Excise. (*Ale, &c.*)

to prove that the party carried out any part of such guile before he paid the duties. *f. 22.*

And by the said act, if any maker of *vinegar, cyder, metheglin, mead, or sweets* for sale, shall conceal any vinegar, or liquor prepared for vinegar, or any cyder, metheglin, mead, or sweets from the view of the gager, he shall for every barrel of vinegar or liquor prepared for vinegar, or sweets, forfeit 40 s. for every hodshead of cyder 40 s. and for every gallon of metheglin or mead 5 s. *f. 16.*

And if any maker or retailer of vinegar, or other the liquors last mentioned, shall on request or demand made by the gager in the day time, or if by night in the presence of a constable, refuse to permit him to enter his house, storehouse, or other place used by him, and to take account of the said liquors; he shall forfeit 15 l. *f. 17.*

And by the 6 G. 3. c. 14. If any person shall obstruct the excise officer in execution of the powers of that act, in relation to the duties on cyder and perry; he shall forfeit 40 l. *f. 17.*

Indifferent gagers may be sworn.

16. As often as there shall be occasion, two able artists shall be appointed, one of them by the commissioners or subcommissioners, and the other by the brewers of any city or place; who shall be sworn before a justice, to take and compute the just contents and gage of all coppers, fats, tuns, backs, and coolers, and all other brewing vessels of that nature, and to deliver under their hands one copy of the contents to the commissioners and subcommissioners, and another to each respective brewer. 15 C. 2. c. 11. *f. 7.*

Brewer to declare how much he intends to make.

17. Every common brewer who shall make any guile of beer or ale, shall declare to the gager, how much strong beer or ale he intends to make of such guile, and how much small, before any part of the guile is cleansed or removed out of his tuns; and if such brewer or his servants shall refuse to make such declaration, the gager shall return the whole as strong, and the brewer shall also forfeit for every barrel in such guile 20 s. And if such brewer or his servants after such declaration shall make any increase of the strong beer or ale, or if the gager shall find any beer, ale, or worts of the same guile laid off, over and above the quantity so declared; he shall forfeit for every barrel so increased, laid off, or found over and above such quantity 5 l. and the servant assisting therein 20 s. and in default of payment be imprisoned three

three months: And if on an information against the brewer for the said penalties, it appear by his evidence, that the strong beer or ale so declared, was increased by adding to or mixing with it any beer or ale that was left in the brewhouse of a former guile, he shall nevertheless incur the penalties, except it be also proved upon oath that the strong beer or ale so added to such guile, was added in the sight and view of the gager. 8 & 9 *W. c. 19. f. 2.*

18. And whereas many brewers, having strong beer or ale remaining in the brewhouse from the time it was brewed, until the next guile or brewing, the quality of which they frequently alter by mixing with the same new small beer, or old returned drink, and then add the beer and ale so altered to the next guile; if it shall appear to the gager that the quality of such strong beer or ale so remaining in the brewhouse of a former guile, and added to a guile of new drink, hath been so altered since it was brewed, he shall return all such beer and ale so altered and added to a guile of new drink, as if the same were then originally brewed, and had never been charged before. 8 & 9 *W. c. 19. f. 3.*

Mixing drink of a former brewing.

19. If any common brewer, innkeeper, or victualler, shall cleanse or remove out of his brewhouse any part of his guile, or brewing of beer, ale, or worts, before the whole of such guile is brewed off, and be in his tuns, backs, or coolers, and until the gager shall or might have taken an account of the same, without first giving notice to the supervisor or gager, at what time, and how much of such guile or brewing he intends to cleanse or remove, and where he intends to dispose of the same; he shall for every barrel forfeit 40s. 7 & 8 *W. c. 30. f. 21.*

Removing drink before the whole is brewed off.

20. Where it shall appear to the gager, that any worts are missing, or not fairly let down into the tun, and the gager cannot find the same, he may charge for so much beer or ale, as such worts so missing would reasonably make. 1 *W. f. 1. c. 24. f. 6.*

Gager may charge for worts missing.

21. Gagers may take their gages, and make their returns and charges, upon warm worts in the backs, coolers, or other vessels; and in such case make allowance of one tenth part thereof for wash and waste; which worts shall not be afterwards charged, when made into beer or ale. 1 *W. f. 1. c. 24. f. 7.*

Gage may be taken in warm worts.

22. If any common brewer, innkeeper, victualler, or other retailer of beer or ale, shall after an account hath

Mixing small beer with strong.

been taken by the gager, convert any small beer or small worts into strong beer or ale, by mingling the same, and shall sell, deliver out, or retail the same, without giving notice to the same gager, of the quantity so mingled and converted, or if any such brewer or retailer shall conceal or convey any beer, ale, or worts not gaged, from the sight of the gager, whereby the king may be defrauded of the duty; he shall forfeit 20 s. a barrel. 15 C. 2. c. 11. f. 12. 1 W. sess. 1. c. 24. f. 11.

And by the 2 G. 3. c. 14. If any common or other brewer, innkeeper, victualler, or retailer of beer or ale, shall mix, or cause or suffer to be mixed, in any vessel, tub, measure, or otherwise however, any strong beer, ale, or strong worts, with any small beer or small worts or with water, after the gauge shall have been taken; he shall forfeit 50 l. f. 2.

Time of delivering out,

23. No common brewer shall sell, deliver, or carry out any beer or ale to any of his customers, either in whole cask or by the gallon, in any city or market town, before notice given to an officer of excise, but between three in the morning and nine in the evening from Mar. 25. to Sep. 29. and between five in the morning and seven in the evening between Sep. 29. and Mar. 25. on pain of 20 s. a barrel. 15 C. 2. c. 11. f. 11.

And by the 10 & 11 W. c. 21. *Vo vinegar maker* shall receive into his custody any liquors for making of vinegar, nor deliver out any vinegar in casks or by the gallon, without notice first given to the officer, unless from Sep. 29. to Mar. 25. yearly, between seven in the morning and five in the evening; and from Mar. 25. to Sep. 29. between five in the morning and seven in the evening; on pain of 50 l. f. 12.

And on receiving such liquors into his custody, he shall shew the same to the gager before he mix them with any other liquors, rape, or other materials; on pain of 20 l. *id.* f. 13.

Mixing after delivered out.

24. If any common brewer, or innkeeper, shall on carrying out his drink, or after it is carried out, mix any small beer or small worts, with any strong beer or ale on his dray, or in any victualler's cellar, or other place; he shall forfeit 5 l. and the gager may taste the drink upon the dray, and also on request may enter the cellar or other room in the possession of any innkeeper or victualler that shall receive any drink from a common brewer, and taste the drink in the same; and if the innkeeper or victualler shall refuse him to enter into his cellar or other

other rooms, or to taste the drink in the same, he shall forfeit 5*l.* 7 & 8 *W. c.* 30. *f.* 23.

25. No retailer of beer or ale, shall after the receipt thereof from the common brewer, mix any beer, ale, or worts of extraordinary strength, with any small beer, ale, or worts, in any vessel containing three gallons or more; on pain to forfeit for every barrel so mixt, double the duty of excise for strong beer or ale, and so proportionably for any greater quantity. 22 & 23 *C. 2. c.* 5. *f.* 11. Mixing by the retailer.

26. And for avoiding uncertainties in the returns of the gagers, the barrel of beer (within the bills of mortality) shall be 36 gallons of four quarts to the gallon, according to the standard in the exchequer; and the barrel of ale 32 gallons: And all other the liquors aforesaid, shall be reckoned according to the wine gallon. 12 *C. 2. c.* 24. *f.* 34. 1 *W. ft. I. c.* 24. *f.* 5. Measure and allowance for leakage, within the bills of mortality.

And the common brewer, not selling the same by retail, for waste by filling and leakage, shall be allowed on every 23 barrels of beer, whether strong or small, three barrels; and upon every 22 barrels of ale, two barrels. 12 *C. 2. c.* 24. *f.* 36.

But if any common brewer shall make a false entry, and be convicted thereof; he shall, over and above other penalties, forfeit the said allowance for six months then next ensuing. 12 *C. 2. c.* 24. *f.* 37.

27. In all other places, 34 gallons shall be reckoned for a barrel of beer or ale; and the allowance for waste shall be 2½ on every 23 barrels. 1 *W. ft. I. c.* 24. *f.* 5. In other places.

28. Notes of every gage, signed by the gagers, containing the inches and tenths of the backs, and wants of the tuns and quality of the liquors, shall be left by them with the common brewers of ale or beer, or some servant (if demanded) at the time of taking the gages; on pain of 40*s.* 7 & 8 *W. c.* 30. *f.* 46. Notes of the gage and charge to be left.

And by the same act, the gager shall, within three days after the end of every week, deliver to or leave with the brewer or retailer, or their servants, a true copy under his hand of each respective charge by him made, containing the quantity and quality of the liquors by him charged in such week; and if he shall neglect or refuse (after demand in writing, 12 *G. c.* 28. *f.* 30.) to leave such copy, or shall charge such person more than such copy contains, he shall forfeit 10*l.* *f.* 25.

29. The commissioners of excise or appeals, or justices of the peace, on complaint of any over charge returned upon them by the gager, shall hear and determine the Relief in case of overcharge.
com-

Excise. (*Ale, &c.*)

Entry and pay-
ment of debts.

complaint; and examine witnesses on oath, and thereupon, or by other due proof, may discharge such complainant of so much of his charge as shall be made out before them. 1 *W. sess.* 1. c. 24. f. 13.

30. All common brewers of beer and ale, shall once in every week; and all innkeepers, alehousekeepers, victuallers and other retailers of beer, ale, cyder, perry, or methglin, brewing, making or retailing the same, shall once in every month, make entries at the excise office, of all such liquors brewed, made or retailed in that week and month respectively. 12 *C.* 2. c. 24. f. 29.

And all such common brewers who do not once a week make due entries, shall forfeit 10 l. And every such innkeeper, who doth not make true entries once a month, shall forfeit 5 l. And every alehousekeeper, victualler, or other retailer, who doth not once a month make due entries, shall forfeit 20 s. *id.* f. 30.

And every common brewer who shall not pay within a week after he made his entry, or ought to have made his entry, shall pay double value of the duty: and every innkeeper, alehousekeeper, victualler, or other retailer who shall not pay within a month after he made his entry, or ought to have made his entry, shall pay double value of the duty. *id.* f. 31.

Provided that no such person shall be compelled to travel for making the said entries, on payment of the said duties, or other cause whatsoever touching the same, if he live in a market town, out of the said town: if he live out of a market town, then to no other place than to the next market town to his habitation in the same county, on the market day. *id.* f. 32.

But no common brewer shall be prosecuted for any forfeiture for any misentry or short entry, if he shall in one week after the delivery of the copy of the return made by the gager, rectify his entry according to the said return, or otherwise discharge himself. 15 *C.* 2. c. 11. f. 6.

But no brewer shall have any benefit of this proviso, on any information to be brought against him for non-entry, false entry, or non-payment; if it shall appear by the evidence, that he did not *bona fide* shew to the gager all the beer, ale, and worts of, each respective guile, for such time for which such copy of the return was made; or if any apparent fraud was acted, to defraud the king of his duty, for any part of the drink brewed in the time for which such copy of the return is made or given by the gager. 1 *W. sess.* 1. c. 24. f. 10.

31. But if any person shall brew, and sell by retail, any small quantities of beer or ale in any fair, who is not otherwise a common brewer or retailer thereof, and shall before such selling and retailing, pay the excise for the same: he shall be freed from all penalties relating to such entries and the like. 12 C. 2. c. 24. f. 39. Exception of selling in fairs,

32. If any *sweets*, having paid the duty, shall be intended to be removed, the excise officer shall on request give a certificate under his hand, expressing the quantity and quality, and from whom and to whom they are to be sent; and if any maker shall otherwise remove them, or vintner receive them, he shall forfeit 10 s. a gallon, and also the liquor and casks. 6 G. c. 21. f. 22. Permit for removal after duty paid.

33. The commissioners and subcommissioners may compound with innkeepers and others for the duties. 12 C. 2. c. 24. f. 40. Compounding.

But no person who hath compounded shall, during the term of such composition, suffer any beer or ale to be brewed within his brewhouse, for any other common brewer, without first giving notice to the commissioners or subcommissioners, and forthwith paying down the excise thereof; upon pain that as well the brewer who shall brew the same, as the brewer for whom it shall be brewed, shall forfeit 5 l. for every barrel. 15 C. 2. c. 11. f. 14.

34. All the brewing vessels and utensils for brewing, into whose hands soever they shall come, and by what conveyance, or title soever they be claimed, shall be subject to all the debts and duties of excise in arrear for any beer or ale made in the said brewhouse; and shall also be subject to all penalties and forfeitures against the laws of excise; and it shall be lawful to levy debts and penalties, and use such proceedings against the utensils therein contained, as it may be lawful to do, in case the debtor or offender using the said utensils had been the real owner thereof. 15 C. 2. c. 11. f. 13. Utensils liable to the penalties and duties.

35. No information shall be brought against any common brewer, or alehousekeeper, vinegar maker, or cyder maker, for any misentry or offence, but within three months after the offence committed; and notice thereof shall be given to him in writing, or left at his dwelling house, within a week after laying and entering the information. 1 W. sess. 1. c. 24. f. 16. 12 & 13 W. c. 11. f. 17. Limitation of actions.

36. If any common brewer, or maker of cyder, making beer, ale, or cyder for sale, shall deliver to any distiller or vinegar maker, any wash, tilts, ale-beer, vinegar-beer, or cyder, Delivering materials to dist. &c.

Excise. (*Ale, &c.*)Carrying coast-
wise.

cyder, without first giving notice to the gager, what quantity he intends to deliver, and when, and to whom; he shall forfeit for every barrel 20 s. 8 & 9 *W. c.* 19. *f.* 9.

37. The master of any vessel, in which shall be shipped any cyder or perry to be carried coastwise, shall, within three days after his arrival at any port where any part thereof is to be delivered, give to the proper officer of excise there an account in writing of the whole quantity by him received on board, distinguishing therein the names and places of abode of the persons by whom the same was put on board, and at what place; and the names and places of abode of the persons to whom the same was consigned, and where to be delivered: Which if he shall not do, or shall deliver any part thereof at sea, or in any other place than where it was consigned, (unavoidable accidents excepted;) he shall forfeit 20 *l.* And he shall, within 21 days after his arrival at the place of delivery, land all the cyder and perry to be delivered there; on pain of forfeiting all such as shall not be so landed, and the same may be seized by any officer of excise, together with the casks or other package. 6 *G. 3. c.* 14. *f.* 8.

Exportation.

38. Ale, beer, cyder, or mum, may be exported; paying custom 1 s. a tun. 1 *W. c.* 22.

And on exportation thereof the excise shall be repaid. 22 & 23 *C. 2. c.* 5. *f.* 15. 7 *G. 3. c.* 20. *f.* 31. 6 *G. 3. c.* 14. *f.* 16.

But by the 1 *G. 3. c.* 7. on repayment of the excise on strong beer and ale, there shall be a deduction of 3 d. a ton for the charges of the officers. *f.* 5.

And when barley is at 24 s. a quarter or under; a bounty shall be paid to the exporter of strong beer or ale, of 1 s. a barrel. *f.* 6.

II Candles.

Duty on candles
imported.

1. For every pound of tallow candles imported, shall be paid in the whole, by the several acts, 2d. $\frac{1}{4}$. 2 *W. sess.* 2. *c.* 4. *f.* 37. 8 *An. c.* 9. *f.* 1. 9 *An. c.* 6. *f.* 11. For every pound of wax candles imported, 8 d. 8 *An. c.* 9. *f.* 1. 9 *An. c.* 6. *f.* 11.

Duty on candles
made in Great
Britain.

2. For all candles made of wax, or usually called or sold for wax candles (notwithstanding the mixture of any other ingredients) made in *Great Britain*, shall be paid 8 d. a pound.

All other candles 1 d. a pound. 8 *An. c.* 9. *f.* 1. 9 *An. c.* 6. *f.* 11.

3. But

3. But the said duties shall not be charged on such small rush lights, as shall be made by any persons to be used in their own houses only, so as none of them be sold or delivered out or made for sale, and so as they be once only dipped in, or once drawn thro' grease or kitchen stuff, and not thro' any tallow melted or refined. 8 *An. 9. c. f. 31.* Rush lights excepted.

4. During the continuance of the duties upon candles, no person shall use in the inside of his house, any lamp, wherein any oil or fat (other than oil made of fish within Great Britain) shall be burned for giving light; on pain of 40s. 8 *An. c. 9. f. 18.* Oil not to be used instead of candles.

5. No maker of candles shall erect, set up, alter, or use any melting house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of candles, or for the melting or keeping any wax, tallow, or other materials proper to be made into candles; or use any copper, furnace, moulds, or other vessel for melting of wax, tallow, or other materials to be made into candles; without notice thereof being first given in writing at the next office of excise; on pain of 50l. 8 *Ann. c. 9. f. 6.* Places of making candles to be entered.

And all candles, wax, tallow, and other materials for making candles, which shall be found in any private melting house, workhouse, or other place, and all private coppers, furnaces, and other vessels, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 8 *An. c. 9. f. 17.*

And by the 11 *G. c. 30.* If any maker of candles (except compounders) shall use any melting house, shop, or other place, for making or keeping of candles, or for melting or keeping of wax, tallow, or other materials, or use any copper or other vessel for melting the same, or any moulds or other utensils for making of candles, without having made entry thereof in writing at the next excise office; he shall forfeit 100l. *f. 23.*

And the officer between five in the morning and eleven in the evening, with or without a constable, and between eleven in the evening and five in the morning, with a constable, shall be permitted on request to enter and search; and all chests and other like things locked up, shall on his request be opened; on pain that every person obstructing or molesting him, shall forfeit 100l. 11 *G. c. 30. f. 24.*

And if the officer on his searching any unentered house or place, shall find candles either made or making, or tallow or other materials melting or melted, or cottons or rushes spread, or any copper, mould, or other utensil warm with tallow

tallow or other materials; this shall be sufficient evidence to convict the offender in the penalty of 100 l. for having used the same not being entered. 11 G. c. 30. f. 25.

And leaving a summons at the place where the discovery was made, directed to the person prosecuted by his right or assumed name, shall be deemed as effectual as if personally delivered to him; and by his proper name. *id.* f. 26.

Officer to enter
and take ac-
count.

6. The officer shall at all times, by day or by night, and if in the night, then in presence of a constable, be permitted on his request, to enter the house, melting house, warehouse, or other place, belonging to, or used by any person who shall be a maker of candles; and by weighing or tale of the candles, or otherwise, to take an account of the quantity; and shall thereof make a return in writing to the commissioners, or to whom they shall appoint; leaving a true copy of such report, under his hand, with or for the maker; and if he shall refuse or neglect to leave such copy (on demand thereof made in writing, 12 G. c. 28. f. 30.) he shall forfeit 40 s. 8 *An.* c. 9. f. 10.

The maker to
keep scales and
weights.

7. And the maker shall keep just scales and weights, where he makes his candles; and shall permit and assist the officer to make use thereof, on pain of 10 l. 8 *An.* c. 9. f. 11.

And by the 10 G. 3. c. 44. if he shall make use of insufficient scales or weights, he shall forfeit 100 l.: But not to be prosecuted both on this and the former act.

Notice and time
of making.

8. No maker of candles for sale, shall begin to make any course or making of candles, without notice thereof first given to the officer, unless from *Sep.* 29 to *Mar.* 25. yearly, between seven in the morning and five in the evening; and from *Mar.* 25. to *Sep.* 29. between five in the morning and seven in the evening; on pain of 10 l. 10 *An.* c. 26. f. 107.

Maker to declare
the number and
size.

9. Every maker of candles for sale, shall before he begins to make or dip any making or course of candles, declare to the officer the number of sticks he designs to make and the size of the candles whereof each stick is to consist; and if such making or course is intended to be of moulded candles, then he shall declare to the officer, before he begins to fill the moulds, how many moulds he intends to fill at such making, and how often he intends at such making to draw the moulds: and if he shall neglect or refuse to make such declaration, or shall after such declaration make any

any increase of his number of sticks, or of the sizes of his candles, in such making or course; or in the case of making mould candles, shall fill a greater number of moulds, or draw such moulds oftner than shall be declared; or if he shall, after the weighing of any making of candles by the officer, increase the weight of such candles, by redipping, or otherwise; he shall forfeit 10 l. 10 *An. c. 26. f. 106.*

And by the 11 *G. c. 30.* If any maker of candles for sale, shall begin to make any course of candles, not being mould candles, or make preparation for the same without notice in writing to the officer of such his intention, and of the time of the day or night when he intends to begin, and of the number of sticks of which such making is intended to consist, and of the sizes and number on each stick; he shall in default hereof, or if he have at such making more sticks, or more candles, or larger than mentioned in the notice, forfeit 50 l. and if after such notice, he shall not begin at the time, or within three hours of it, such notice shall be void. *f. 27.*

And lighting a fire under a vessel, for melting the materials, or finding in such a vessel, or in any mould, the materials melted or melting, or cottons or rushes spread or spreading, shall be deemed to be such a *beginning to work*, as shall make him liable to the said forfeiture. *f. 28.*

10. The officer shall be permitted to take an account of the quantities of wax, tallow, and other materials; and if he shall miss any that he had taken account of at the last time he was at the maker's, and shall not on demand receive satisfaction what is become thereof, the officer may charge such quantity of candles, as the materials so missing in his judgment would have made, not exceeding 108 lb. of candles for every 112 lb. of materials missing, and so proportionably. 8 *An. c. 9. f. 12.*

The officer shall charge for materials missing.

And if any such maker shall obstruct the officer, he shall forfeit 20 l. *f. 13.*

11. Candles cracked or spoiled in making, may be defaced by the officer, who shall make allowance for the duty. 8 *An. c. 9. f. 29.*

Candles spoiled in making.

12. No maker of candles shall (on pain of 20 l.) remove any candles, before the officer hath taken account of the same, without given to the officer, within the bills, 24 hours notice; and elsewhere, two days notice, of his intention to remove the same. 8 *An. c. 9. f. 14.*

Removing candles before surveyed.

13. The maker shall keep his candles which have not been surveyed, separate from all other candles which have been surveyed, for 24 hours after making, within

Candles unsurveyed to be kept separate.

the bills, and for two days elsewhere; unless they shall have been sooner surveyed by the officer; on pain of 5 l. 8 *An. c. 9. f. 15.*

Search for candles concealed.

14. If the officer shall have cause to suspect, that candles are privately making in any place; or that any candles are concealed with intent to avoid the duty; in such case, on oath made by such officer before a commissioner or one justice residing near to the place, setting forth the ground of his suspicion, such commissioner or justice may, if he shall judge it reasonable, by special warrant authorize such officer, by day or night (but if in the night, in presence of a constable), to enter into every such place suspected, and to seize and carry away as forfeited all such candles as he shall there find so privately making, together with all materials then ready or preparing for making the same, and also all such candles as they shall find so concealed, together with the boxes or other package containing the same: And the person that shall be found privately making such candles, or in whose possession any such shall be found, shall forfeit 100 l. 5 *G. 3. c. 43. f. 20.*

Further penalty of removing, mingling, or concealing.

15. If any maker of candles for sale, shall mingle candles which have not been weighed by the officer, with those which have; or shall fraudulently remove any before weighing; or conceal any candles or materials: he shall forfeit 100 l. 11 *G. c. 30. f. 30.*

Entry of candles made.

16. Every person who shall make any candles within the bills of mortality shall monthly, and elsewhere once in every six weeks, make a true entry in writing, at the next excise office, of all candles by him made within such time; which entry shall contain the weight, number, and size of the candles, and what quantity thereof was made at each course in the several weeks; on pain for every neglect of entry to forfeit 20 l. Which entry shall be upon the oath of the maker or his chief workman, according to the best of their knowledge and belief; the said entries and oaths, within the bills, to be made with and administered by such officer as the commissioners shall appoint at the general excise office, and elsewhere by the collectors or supervisors. 8 *An. c. 9. f. 7.*

But he shall not be obliged to go further than the next market town, for making such entry. *f. 8.*

Duty to be cleared off.

17. And the maker shall in four weeks within the bills, and elsewhere in six weeks, after such entry, pay and clear off the duties; on pain of double duty: and no maker

maker after default in payment shall sell, deliver, or carry out any candles till he hath paid off the duty, on pain of double value. 8 *An. c. 9. f. 9.*

18. And if there shall be found in the possession of any maker of candles for sale, any candles not mentioned in the entry made by him, and of which the officer hath not had an account, and the duties have not been paid; he shall be chargeable with the duties, and if he do not pay the same, he shall be liable to double duty, unless he shall prove that the duty hath been paid, or that he bought the same of some other chandler who had paid the duty, and that he gave six hours notice in writing to the officer, or at the next excise office, of his intention to buy the same, and of whom. 11 *G. c. 30. f. 29.*

19. No person shall expose to sale any candles, unless in his publick shop or warehouse, publick fair or market; on pain of 5*l.* 8 *An. c. 9. f. 18.*

20. The commissioners or such person as they shall appoint, and in default thereof the collector or supervisor, may compound with persons that make candles for their own private houses, for the duties at 1*s.* a year for every head in the family, to be paid quarterly; and such person shall not be liable to the duties. 8 *An. c. 9. f. 20.*

But if any person after composition shall sell or deliver out any candles, or shall permit any other person to make candles in his house or outhouse; or shall have more persons of his family than he shall compound for, without giving notice of them in writing at the next excise office, at or before the next quarter day, and paying the like composition for them, he shall forfeit 5*l.* and lose the benefit of his composition, and be liable to the duties and survey of the officers; and for every pound of candles so privately sold or delivered out or made, shall forfeit 5*s.* *f. 21.*

And every such compounder, who shall make default in continuing the same, shall in ten days make entry upon oath of all such candles as he shall be possessed of, at the excise office, on pain of forfeiting 20*l.* and the candles of which no such entry shall be made; and in six days after such entry, shall pay the duties, on pain of double value of the candles, and his houses and other places shall be liable to the search of the officers. 9 *An. c. 6. f. 14.*

21. Cocquets granted for shipping candles to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if they shall be shipped without such cocquet, they shall be

Candles not entered, nor duty paid.

Candles where to be sold.

Compounding.

Candles carried coastwise.

Excise. (*Candles.*)

Exportation and
importation.

forfeited, and seized, together with the package. 23 G. 2. c. 21. f. 29.

22. No candles shall be imported, otherwise than in some package, containing at least 224 lb. of neat candles, and stowed openly in the hold; on pain of being seized and forfeited, together with the package; and the master of the vessel shall forfeit 50l. 23 G. 2. c. 21. f. 27.

But on information brought against such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the candles were put on board by any mariner without the master's knowledge, the master may apply such mariner's wages, in payment of the forfeiture. 26 G. 2. c. 32. f. 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all candles forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 G. 2. c. 21. f. 28.

Candles for which the duty hath been paid, may be exported, and the duty drawn back. 8. An. c. 9. f. 24, 25, 26.

But no drawback shall be allowed, on the exportation of any foreign candles imported. 23 G. 2. c. 21. f. 36.

And the officers of excise or customs may seize any candles, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe, that the same were made in some private work-house, or clandestinely imported without payment of duty; or that the same have been exported and relanded after payment of the duty; and if the party in whose possession the same shall be found, shall not at the hearing of the information, make it appear, that the duty hath been paid or secured, he shall forfeit 5l. for every 100 lb. weight, and also the candles and package shall be forfeited. f. 30.

And if any foreign candles shall be unshipped, with intention to be laid on land, before entry and payment of the duties, or shall be landed again after shipping for exportation upon debenture; the same, together with the package, vessels, boats, horses, and other carriages, used in landing or conveying the same, shall be forfeited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized shall forfeit 5l. for every hundred weight. f. 31.

And if any person shall knowingly harbour or conceal any candles unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims

Excise. (Candles.)

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claims any property therein or not, forfeit 50 l. for every hundred weight, together with the candles and package.

f. 32.

And where any such candles shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation at the next market town on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment thereon, shall not be liable to any appeal, or to be removed by certiorari. *f. 33.*

23. All the said fines, forfeitures, and penalties, may be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and distributed half to the king, and half to him that shall inform or sue. *8 An. c. 9. f. 28.*

28. *11 G. c. 30. f. 39.* 24 *G. 2. c. 40. f. 33.*

24. And if the party is not satisfied with any judgment of the justices on the act of 23 *G. 2. c. 21.* before mentioned, he may appeal to the next quarter sessions, except in the case before mentioned where no person shall claim the goods seized. *f. 37.*

25. And on informations on the said act of 23 *G. 2.* the mitigation shall not reduce the penalty to less than a fourth part, over and above the costs and charges to be allowed. *f. 38.*

26. And where candles shall be seized for nonpayment of duties, or non-entry, and it shall be disputed whether such payment or entry was made or not, the proof shall lie on the claimer, and not on the officer. 23 *G. 2. c. 21. f. 35.*

27. All candles, materials, and utensils for making of candles, in custody of any maker of candles, or person in trust for him, shall be chargeable with all duties in arrear, and subject to all penalties and forfeitures; in the same manner as if the debtor or offender were the lawful owner. *8 An. c. 9. f. 19.*

III. Coaches.

1. For every coach, berlin, landau, chariot, calash with four wheels, chaise marine, chaise with four wheels, and

D 2

caravan,

Excise. (Coaches.)

caravan, kept by any person for his own use, or to be let out to hire; shall be paid 4l. yearly: and for every calash, chaise, and chair with two wheels, kept by any person for his own use, or to be let out to hire; shall be paid 40s. yearly. 20 G. 2. c. 10. s. 1.

But this shall not extend to *licensed hackney coaches*, within *London* and *Westminster* and the suburbs thereof, not employed in carrying persons more than ten miles from the said cities. s. 11.

Nor to *coaches kept for sale*: But no such carriage shall, whilst in possession of the coachmaker or other person, be employed for his own use, or for the use of any other person (other than such whose carriage shall be then and there mending), or be let out to hire; on pain of 20l. s. 12.

Nor to any *publick stage coach*, which is constantly employed in carrying passengers for hire, on certain fixed days in every week, and not let to hire by way of by-jobb, for a day, or any longer time. s. 7.

Nor to any *post chaise* kept for hire by the postmaster general, or any deputy postmaster: But such post chaises shall in 30 days after letting out the same, be entered by the owners at the next office of excise; and shall (besides the king's arms) have such mark of distinction fixed thereon, as shall be appointed by the commissioners; on pain of 20l. s. 8, 9.

And the commissioners shall cause a mark of distinction to be fixed on every such carriage, that shall be let out to hire; and if any person shall let out to hire any such carriage without such figure fixed thereon, or shall take off the same when fixed; he shall forfeit 20l. s. 10.

Moreover, no person shall be obliged to pay the said yearly sum of 4l. for more than five such carriages kept for his own use only; but if he keep the same for supplying any waiting jobb, by the day, week; month, quarter, or any other time, or to be let out to hire, he shall pay 4l. for each, tho' exceeding the number of five; and every person who shall keep such carriage with two wheels, to be let out for hire, shall pay 40s. yearly for each, tho' exceeding the number of five. s. 2.

Entry and payment of the duties.

2. Every person who shall keep such coach or other carriage, shall in 20 days after he shall begin to keep the same, and within 20 days yearly after the expiration of 12 calendar months after the time of giving such first notice;—give notice in writing, at the chief office of excise in *London* (if within the bills); and elsewhere, shall give notice at the next office of excise,—of his keeping the same,

same, and the number, and whether with four or two wheels, and where he resides; and at the same time pay down the duties: on pain of 20l. *f. 4, 5.*

But if the duties are paid, and entry made, before information brought, the party shall not be prosecuted, tho' it be not strictly within the time limited. *f. 15.*

And the said entry and payment shall be registred by the proper officer, and a receipt given for the duty, of which receipt the officer shall keep an indented duplicate. *f. 6.*

3. Where a person shall die before the end of the year, the person claiming title to the coach, may use it, as the deceased might have done. *f. 16.* Persons dying before the end of the year.

4. All the said rates and duties, and all forfeitures and offences, shall be determined by the commissioners of excise (or of appeals, in case of appeal), within the limits of the chief office in *London*; and elsewhere, by two justices near; who shall, on complaint upon oath, summon the party, and on his appearance or contempt, may examine the fact, and on proof thereof either by confession, or oath of one witness, give judgment, and issue warrants for levying penalties by distress and sale (if not redeemed in 14 days); which shall be employed (all necessary charges first deducted) half to the use of the king, and half to the informer: And for want of sufficient distress, they may imprison the party till satisfaction is made. *f. 13, 14.* Power of the justices.

[But as these duties chiefly affect the nobility and persons of distinction, it had been better if the act had been more explicit with respect to the punishment; otherwise it may not be so safe for justices of the peace, upon such vague and general words, to imprison a peer of the realm, or distrain the goods of a member of parliament during their sessions. But if the justices will proceed, or shall be compelled by *mandamus*, or otherwise, so to do; they must remember withal, that by the 27 G. 2. c. 20. they may not order the distress to be detained more than eight days, nor less than four.]

5. Persons aggrieved by the determination of the justices, may appeal to the next quarter sessions. *f. 13.* Appeal.

IV. Coffee, tea, and chocolate.

1. For all coffee imported, shall be paid at the custom house, in the whole, the sum of 3d. a pound. 10 G. c. 10. *f. 48, 49.* Duty on coffee.

Excise. (Coffee, &c.)

And an inland duty, to be paid by the maker or seller, of 2s. 6d. a pound. 10 G. c. 10. f. 4, 6. 5 G. 3. c. 45. f. 12.

Except coffee of the growth of the *British* plantations in *America*; which shall pay only 1s. 6d. a pound. 5 G. 2. c. 24. f. 1.

Duty on tea.

2. No tea shall be imported, but from the place of its growth; on pain of forfeiture. 11 G. c. 30. f. 8.

And by the 18 G. 2. c. 26. Over and above the customs on importation, there shall be paid on all tea, an inland duty of 1s. a pound, and 25l. for every 100l. of the gross price at which it shall be sold at the *East India* company's sales; which shall be paid in ready money by the proprietor to the collector, before it be taken out of the warehouse. f. 2.

In order to which, the commissioners may appoint officers to attend at the *East India* company's sales, and take an account of the names of the buyers and prices, and make report thereof to the commissioners; from whence the 25l. *per cent.* shall be ascertained; and to prevent mistakes, the said officers may inspect the company's books. 18 G. 2. c. 26. f. 6.

And every person declared the best bidder at such sale, shall within three days after, deposit with the company or their clerk 40s. for every tub and chest of tea, on pain of six times the value, and such sale shall be void, and the same shall in 14 days after be put up again. f. 7.

(But by the 7 G. 3. c. 56. for five years from July 5, 1767, the said inland duty of 1s. a pound, shall not be paid for any *bohea*, *congo*, *fouchong*, or *pekie* teas, commonly called *black teas*, or any teas known by the denomination of *singlo* teas, which shall be cleared out of the warehouses for consumption within Great Britain. f. 1.)

Duty on cocoa
nuts and chocolate.

3. No chocolate ready made, or cocoa paste, shall be imported, on pain of forfeiting the same, and double value; and also the bags, casks, and other package. 10 G. c. 10. f. 2.

For cocoa nuts imported, shall be paid at the custom house in the whole, 10s. a hundred weight. 10 G. c. 10. f. 47, 49.

And if any person shall import any cocoa nut shells or husks, without the nuts, the officers of the customs, excise or inland duties, may seize them, with the bags, boxes, and package; and after condemnation they shall be destroyed or otherwise disposed of, as the respective commissioners, or three of them shall appoint; and they may reward such officer in any sum not exceeding 20s. a hundred weight. 4 G. 2. c. 14. f. 12.

For

For all chocolate made or sold in *Great Britain*, shall be paid by the maker or seller, 2s. 3d. a pound. 10 G. c. 10. f. 6. 32 G. 2. c. 10. f. 10.

4. No *coffee* shall be imported otherwise than in cask, chest, case, bag, or other package, which shall contain 112lb. at the least, to be stowed openly in the hold; on pain of forfeiting the same, together with the package; which may be seized by any officer of the customs or excise. 5 G. 3. c. 43. f. 34. In what quantities to be stowed.

5. The excise officers may go on board any ships, and search as the officers of the customs may do, for coffee, tea, cocoa nuts, chocolate, and cocoa paste, and seize all such as shall be forfeited, or shall be unshipt without entry and payment of duties, with the boxes, bags, and other package. 11 G. c. 30. f. 1. Officers of excise may go on board and search.

6. By the 9 G. 2. c. 35. Where any vessel coming from foreign parts, and having six pounds or more of tea on board, shall be found at anchor, or hovering within two leagues of the shore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all such tea, with the chests and other package, or the value thereof, shall be forfeited (whether bulk shall have been broken or not), and the same may be seized and prosecuted, or the value thereof sued for by the officers. f. 22. Ships hovering near the coast.

And by the 5 G. 3. c. 43. Where any vessel coming from foreign parts, and having on board twenty pounds of coffee, shall be found at anchor, or hovering within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting: all such coffee, together with the package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also with her tackle and furniture shall be forfeited, provided such vessel doth not exceed the burthen of 50 tons.

7. The importer of any coffee, tea, or cocoa nuts, within 30 days after the master or purser shall have ought to have made entry at the custom house, of the burthen, contents, and lading of the vessel, shall make due entry of the said coffee, tea, or cocoa nuts, with an officer of excise to be appointed by the commissioners for that purpose; and the same, on paying or securing the duties shall be landed and put into a warehouse, to be provided at the charge of the importer, and approved of by the commissioners of the customs. 10 G. c. 10. f. 26. 5 G. 3. c. 43. f. 35. The said goods to be warehoused.

Excise. (*Coffee, &c.*)

And if any person shall import any coffee, tea, or cocoa nuts, without entry at the custom house, and bringing the same into the warehouse; the same shall be deemed clandestinely run, and may be seized by any officer of the customs or inland duties; and the same shall be forfeited with the package, together with the horses, carts, and carriages. 10 G. c. 10. f. 27.

And if any person shall neglect or refuse to make such entry with the officer of excise as aforesaid, or to land the same as is above directed; all such coffee, tea, and cocoa nuts shall be forfeited, together with the package wherein the same shall be contained on board such vessel, belonging to such importer so neglecting or refusing; which may be seized by any officer of the excise. 5 G. 3. c. 43. f. 35.

Provided, that this shall not extend to any coffee or tea imported by the East India company. f. 36.

Owner and officer to have each a lock and key.

8. And the owner of the said goods, and the officer for the inland duties, (who shall be appointed by the commissioners of the said duties) shall have each a lock and key; and the owner may in presence of the said officer, and of the warehouse keeper (to be appointed by the commissioners of the customs) view, garble, and sort the said goods, to make them merchantable, and receive them out in the manner hereafter mentioned. 10 G. c. 10. f. 26, 29, 30.

Taking out of the warehouse coffee and tea for home consumption.

9. That is to say, As to coffee and tea in the first place;—If they are intended to be taken out for home consumption, the proprietor, within the bills, shall make entry with the receiver or collector in *London*, of so much as he intends to take out of the warehouse, and pay down the duty; and elsewhere shall make entry at the next office, and pay the duties to the collector; and on producing a certificate signed by such collector or receiver (certifying that he has received the duty) to the warehouse keeper, he shall deliver out so much as is mentioned in the certificate; and shall deliver a permit to accompany such coffee or tea so delivered out, which shall also be signed by an officer attending the warehouse, to prevent the seizing thereof. 10 G. c. 10. f. 26.

Taking out of the warehouse cocoa nuts to be made into chocolate.

10. And as to cocoa nuts, intended to be taken out of the warehouse, to be made into chocolate—an entry thereof shall be made by the proprietor with the receiver or collector, as a charge on him and also on the buyer; who shall certify such entry to the warehouse keeper; and on such certificate, the quantity of cocoa nuts mentioned therein

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therein shall be delivered out with a permit signed by the officer at such warehouse, to be delivered to the officer where they are intended to be carried, that the same officer may take the same into stock. 10 G. c. 10. f. 26.

11. And as to coffee, tea, and chocolate intended for exportation;—it shall be delivered out of the warehouse, on security given that it shall be exported, and not re-landed; which security shall be discharged, on a certificate under the common seal of the chief magistrate in any place beyond the seas, or under the hands and seals of two known *British* merchants there; that the same were there landed, or on proof by credible persons that it was taken by enemies, or perished in the seas. 10 G. c. 10. f. 26.

Taking out of the warehouse coffee, tea, and chocolate, for exportation.

But by the 18 G. 2. c. 26. No drawback shall be allowed on tea exported. f. 5. Saving that it may be exported to *Ireland*, or the *British* plantations in *America*, without paying the inland duties before mentioned. 21 G. 2. c. 14. And by the 7 G. 3. c. 56. for five years from July 5, 1767, the whole duties on importation shall be drawn back for all teas exported to *Ireland* or the said plantations. f. 2.

12. And no feller or dealer shall receive out of the warehouse, less than one hundred weight of each sort at one time; except where the importation and delivering in shall be in less quantities, or where the same shall be sold in lots or parcels less than a hundred weight. 10 G. c. 10. f. 34.

What quantity shall be taken out at a time.

13. And the warehouse keeper and officer appointed by the commissioners of the inland duties shall each of them keep a book, wherein they shall enter an account of all coffee, tea, and cocoa nuts brought into and carried out of the warehouse, and the day and time when, and how much was delivered for home consumption, and how much for exportation, and the names of those for whom it was delivered out; and shall every six weeks, or oftner if required, transmit an account thereof in writing and on oath to the respective commissioners, with an account how much is remaining in the warehouse: Which said commissioners shall in one month appoint a person to inspect the books and warehouses, and examine the accounts; and if it shall appear that any was otherwise delivered out, or before payment of the duties on such coffee and tea as were sold for home consumption, or giving security for what was delivered for exportation, the warehouse keeper and officer respectively offending shall forfeit 100 l. and

Warehouse keeper and officer to keep an account.

and be disabled to hold any publick office. 10 G. c. 10. *f.* 29.

Who shall be deemed a dealer in coffee, tea, and chocolate.

14. Every person who shall keep a publick house, shop, cellar, or other warehouse, for selling of brandy or other spirituous liquors, and shall have in his custody any coffee, tea, chocolate, or cocoa nuts above six pounds weight, shall be deemed a dealer in the said commodities. 11 G. c. 30. *f.* 4.

Licence for retailing.

15. No person shall be permitted to sell or retail any coffee, chocolate, sherbet, or tea, without licence first had by order of the general sessions of the peace in the respective counties (certificate being first shewed, that he hath given good security for payment of the duties to the king); or from the chief magistrate of the place in whose jurisdiction he shall inhabit. And no licence shall be granted to any retailer, till such security shall be given by recognizance or otherwise: For which licence, recognizance, and security, 12d. shall be given, and no more, for the payment of the excise. And persons selling without such licence and security, shall forfeit 5l. a month. 15 G. 2. c. 11. *f.* 15.

Houses of manufacturing and sale to be entred.

16. Every druggist, grocer, chandler, coffee-house keeper, chocolate-house keeper, and other person selling or dealing in coffee, tea, and cocoa nuts, or making or selling chocolate, either by wholesale or retail, shall before he take any the said goods into his possession make entry in writing of all storehouses, shops, rooms, and other places intended to be used by him, at the office for the division; on pain of forfeiting 200l. and the said goods found therein, with the canisters, bags, vessels, and other package. 10 G. c. 10. *f.* 10.

And no entry of any shop, warehouse, room, or utensil for carrying on any trades aforesaid, shall be deemed a legal entry, unless made in the name of the real owner of, and trader in such shop; and the person who acts as visible owner of such place, or principal manager in such trade, shall be deemed the real owner and trader, and consequently liable for any stock found there, or for not making entries, or other offences. 18 G. 2. c. 26. *f.* 8.

And none of the said goods shall be offered to sale but in places entred, or in a warehouse to be approved of by the commissioners; on pain of forfeiting the same and treble value, together with the canisters, bags, and other package. 10 G. c. 10. *f.* 14.

Notice of bringing in.

17. No coffee, tea, cocoa nuts, or chocolate shall be brought into any such shop or other place, without first

giving notice thereof to the officer of the division, and leaving with him a certificate signed by the officer of the division from whence they were brought, that the duties on such coffee, tea, and chocolate have been paid, or that they have been condemned as forfeited; and in case of bringing in of cocoa nuts, that they have been entred with the officers of the customs, or were condemned as forfeited; and expressing the quantity and quality and where the duties were paid, or at what port the customs and duties were paid for the cocoa nuts, or were condemned; on pain of forfeiting the same and treble value, with the canisters, bags, and other package. 10 G. c. 10. f. 11.

18. And where any of them shall be sold in the said entred places, above the weight of 6lb. the officer shall, on request of the seller, give to the buyer a certificate signed by him, expressing the quantity, and the names of the buyer and seller, and that the duties have been paid, or that the cocoa nuts have been entred with the officers of the customs, or that they have been condemned as forfeited; which certificate shall be left with the officer of the division to which the same is intended to be carried, to prevent the seizing thereof. 10 G. c. 10. f. 15.

Permit when sold to the retailer.

19. The officers shall be permitted at all times by day, to enter all warehouses, shops, and other places, and by weighing, gaging, or otherwise, to take an account of the quantity and sorts; in the weighing whereof the owner shall be assisting, and keep just weights and scales; on pain of 100l. 10 G. c. 10. f. 12. 10 G. 3. c. 44. f. 1.

Officers to enter and survey.

20. And if any officer shall have cause to suspect, that any the said goods shall be concealed, if it is within the bills, then on oath made before two commissioners, or elsewhere, before one or more justices, setting forth the ground of his suspicion, they may by warrant authorize such officer by day or night, but if in the night then in presence of a constable, to enter the place suspected, and seize and carry away the same (if found) as forfeited, together with the bags, canisters, and other package; and if any person shall obstruct such officer, he shall forfeit 100l. 10 G. c. 10. f. 13.

Search for goods concealed.

And if any seller or dealer shall conceal any the said goods, he shall forfeit the same and treble value, with the canisters, bags, and other package; and if any person shall obstruct the officer in seizing any of the said goods by virtue of this or any future act, or after seizure shall endeavour to rescue the same, or break or damage the vessels or package; he shall forfeit 50l. f. 39, 40.

And

And by the 11 G. c. 30. Two commissioners or any justice of peace, on complaint by an officer on oath, that he suspects any dealer not to have made true entries, setting forth in such oath the causes of his suspicion, may summon such suspected person to appear with his books, and examine him on oath touching the truth of his entry; and if he shall refuse or neglect to appear, or to make such oath, he shall forfeit 20l. *f. 12.*

True manufac-
turing of coffee.

21. No person shall mix with coffee, to increase the weight, any butter, grease, water or other materials; on pain of 100l. and if any dealer shall knowingly buy or sell any so mixed, he shall forfeit 100l. 11 G. c. 30. *f. 9.*

And the commissioners may appoint houses and proper materials for roasting of coffee berries, and officers to attend them, and one person at each house well skilled in roasting of coffee; to which all persons may resort to have their coffee berries roasted, bringing a certificate from an officer that the duties have been paid, or that it hath been condemned as forfeited; for the roasting of which coffee shall be paid 8s. a hundred weight. 10 G. c. 10. *f. 31.*

But the sellers and dealers may if they think proper, send their own roasters; who shall be permitted to roast the same, paying 3s. a hundred weight. 10 G. c. 10. *f. 32.*

And during the continuance of such roasting houses, no coffee berries shall be roasted, burned, or dried, but in one such house; on pain of forfeiting the same, and 5 s. a pound. 10 G. c. 10. *f. 33.*

And if any officer or roaster shall neglect or refuse to attend such house, he shall forfeit 10l. for the first offence, and 20l. for the second, and be incapable to hold any office in the revenue. 10 G. c. 10. *f. 34.*

True manufac-
turing of tea.

22. No dealer in tea, or manufacturer, or dyer thereof, shall adulterate it, or alter, or manufacture it with any drug, or mix it with any leaf or other ingredient; on pain of forfeiting the same, and 100l. 11 G. c. 30. *f. 5.*

And by the 4 G. 2. c. 14. If any dealer in tea shall dye, or manufacture, any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or any other leaves in imitation of tea, or shall mix or colour such leaves of tea, with *terra japonica*, sugar, molosses, clay, logwood, or any other ingredients; or shall offer to sale, or have in his custody any such leaves in imitation of tea, or any such stained leaves of tea mixed with any ingredient; he shall forfeit for every pound weight thereof 10l. *f. 11.*

23. The maker of chocolate, if within the bills, shall weekly, and elsewhere every six weeks, make entry in writing at the next office, of all chocolate made by him within that time, setting forth the weight thereof, on pain of 50l. Which entry shall be upon oath of the maker or his chief workmen, according to the best of his knowledge and belief, to be administered within the bills by such officers as the commissioners shall appoint, and elsewhere by the collectors and supervisors. But no person shall be obliged to go further to make entry, than the next market town. 10 G. c. 10. f. 17.

True manufac-
turing and
stamping of
chocolate.

And he shall in one week within the bills, and elsewhere in six weeks after entry, clear off the duties, on pain of 50l. besides the duty; and he shall after default in payment, sell or deliver none out till the duty is paid, on pain of treble value. 10 G. c. 10. f. 18.

And he shall at the time and place of entry produce the same so made (on pain of 20s. for every pound not produced); which chocolate shall be tied up with thread in papers of one pound, half a pound, or a quarter of a pound each, and not more or less; which shall be marked or stamped by the officers. 32 G. 2. c. 10. f. 16.

And if any person shall sell chocolate in any less quantity than a quarter of a pound; or shall sell and deliver any chocolate not being duly marked or stamped; or not inclosed and tied up with the identical piece of thread directed to be used in tying up the same before it was stamped; or shall sell and deliver any chocolate, whereof the thread or stamped label inclosing the same shall have been broken or opened; he shall forfeit 20l. f. 17.

And if any person shall counterfeit the said stamp, or shall knowingly sell any chocolate with a counterfeit stamp; or shall, on chocolate, for which no entry hath been made, nor the duties paid, fix any paper with the stamp on; he shall forfeit 500l. and be committed to the next county gaol for twelve months. 10 G. c. 10. f. 22. 11 G. c. 30. f. 13.

And if any stamped chocolate shall be damaged, the owner may in presence of an officer open it, and deliver the stamps to the officer, and work it over again with fresh cocoa nuts, and have it restamped, paying duty for what is added. 11 G. c. 30. f. 14.

But on reworking chocolate, proof shall be made (before the commissioners within the bills, and before two justices elsewhere) that the duties for the cocoa nuts whereof it was made, and for those also which are added, have

Chocolate made
for private
families.

have been paid, and the chocolate entred. 11 G. c. 30.
f. 15.

24. If any person shall be minded to make chocolate for his own family, and not for sale, and shall give notice thereof under his hand to the officer of the division, three days before he begin to make, in which notice shall be specified the quantity of cocoa nuts designed to be made into chocolate, the name of the person to be employed in the making, and the place where; in such case the officer shall give a permission under his hand for making the same, and the place shall not be liable in respect thereof to be surveyed. 10 G. c. 10. f. 23.

And the person for whom it is made, shall in three days after finishing, make entry on oath with the officer, of the whole quantity then made by virtue of such permit, and bring the same wrapt up as before, to have it stamped, and shall pay the duty; and in default thereof, shall forfeit the same, and treble value. f. 24.

And no person shall be permitted to make into chocolate for his own private use, less than half a hundred weight of cocoa nuts at a time. f. 25.

Penalty of re-
tailing the same
without a per-
mit, or pedlars
with one.

25. And if any person shall offer any tea to sale, not having a permit; or if any pedlar, or other trading person, going from town to town, or other mens houses, and trading either on foot, or with any horse or other cattle, or otherwise, shall offer any such tea to sale, altho' he have a permit; the person to whom it is offered to sale, may seize and detain the same and carry it to the next warehouse belonging to the customs or excise, and bring the person before a justice of the peace to be by him committed to prison, and prosecuted for the penalties incurred for such offence; and such tea may be prosecuted in the name of the person who stopped or seized the same, in like manner as if it had been seized by an officer. 9 G. 2. c. 35. f. 20.

And none of the said goods above six pounds weight, shall be removed or carried from one part of the kingdom to another, without a permit signed by an officer, signifying the names and places of abode of the buyer and seller, and the quantity and species of the goods, and that the duty hath been paid, or the cocoa nuts entred as aforesaid, or that they have been condemned as forfeited; on pain of forfeiting the same, together with the canisters, bags, or other package: Which permit shall be left with the officer of the division to which the same shall be carried, to prevent the seizure thereof; in which permit shall be expressed the

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the time for which it shall continue in force. 10 G. c. 10. f. 16.

And if any person shall take out a permit for removing coffee, tea, or cocoa nuts, and shall not send away the goods within the time limited, nor return the permit, he shall forfeit treble value; and if there shall not appear a sufficient decrease made in the stock to answer the quantity in the permit, the officer may seize so much of the said stock as forfeited, as will answer the said quantity in the permit: But no person shall receive a permit, without the direction in writing of the person (or his servant) from whose stock the goods are to be removed; on pain of 50l. and in default of payment, he shall be imprisoned three months. 11 G. c. 30. f. 10.

26. All sellers and dealers in any the said goods, and all makers of chocolate, and coffee or chocolate housekeepers, who shall consume the same in small quantities under six pounds, shall keep an account of all coffee, tea, chocolate, and cocoa nuts which they shall consume in each day; and every night enter in a book an account of the gross quantities retained by them under six pounds; and shall keep another book wherein they shall enter each parcel above six pounds, which they shall sell in each day, which shall not be permitted without a permit from the officer, expressing the quantity and quality, and the name of the seller and buyer, and where it is to be carried, and that the duties were paid, or the cocoa nuts entred, or that they were condemned as forfeited; which books shall be prepared by the commissioners, and by them delivered on demand to such sellers and dealers; and when the books shall be filled up, they shall be returned to the officer upon oath of the truth of the entries; and the said book shall from time to time lie open, and be perused by the officer: And if such seller or dealer shall omit his duty in regard to the said books, he shall forfeit 100l. 10 G. c. 10. f. 35.

Account to be kept of small quantities consumed.

But by the 12 G. c. 28. No dealer in cocoa nuts shall dispose of less than 28 pounds at a time, and then shall enter in writing the name and place of abode of the person to whom sold, and on demand shall produce such account to the officer; on pain of 20l. for each pound of cocoa nuts otherwise disposed of, and of 20l. for default about the entry. f. 29.

27. All the said penalties and forfeitures shall be recovered and mitigated as by the laws of excise or in the courts at Westminster; and be employed half to the use of the king, and half to the informer. 10 G. c. 10. f. 41. 11 G.

c. 30.

Power of the justices.

c. 30. f. 39. 4 G. 2. c. 14. f. 10. 18 G. 2. c. 26. f. 14.
24 G. 2. c. 40. f. 33.

And by the 12 G. c. 28. the penalties on the said act shall be recovered as by the laws of the customs or excise respectively. f. 33.

Proof to lie on
the claimer.

28. And on disputes whether the duties have been paid, the proof shall lie on the claimer, and not on the officer. 10 G. c. 10. f. 28.

Condemnation
and sale.

29. The commissioners shall cause all tea and coffee seized in *London*, and condemned, to be sold there; and if seized elsewhere, they shall cause it after condemnation to be brought and sold in *London*. 12 G. c. 28. f. 1. Or, after having been first valued by sworn valuers, they may be sold where the commissioners shall think proper. f. 16.

But if they think fit, they may cause such tea as cannot be sold for 5s. a pound, to be burnt or otherwise destroyed; and the person making seizure, to be rewarded as they shall think proper, not exceeding 1s. 6d. for each pound of such tea. f. 3.

Reward.

30. But no officer of the customs, or other person, shall be intitled to any reward for any seizure of the said goods, unless he give notice of the seizure to the next officer of excise, or supervisor, in 48 hours; who shall, on such notice, take an account of the species and quantity; nor shall such goods be removed without a permit from such officer of excise, on pain of re seizure. 12 G. c. 28. f. 6.

Utensils liable.

31. All stock and utensils found in the shops or other places aforesaid, shall be liable to the duties and forfeitures. 18 G. 2. c. 26. f. 8.

V. Glafs.

Duty on impor-
tation.

1. By the 19 G. 2. c. 12. Certain additional duties are laid upon glafs imported, over and above what it shall pay by the 2 W. sess. 2. c. 4. and by the book of rates of the 12 C. 2. which shall be under the management of the commissioners of the customs. f. 2, 8.

Inland Duty.

2. Moreover, there shall be paid a duty of 9s. 4d. a hundred weight upon all materials, metal, or other preparation for making of crown, plate, and flint glafs, and all white glafs; and of 2s. 4d. a hundred weight, upon all materials for making common bottles, and all other green glafs: To be paid by the maker; and to be under the management of the commissioners of excise. f. 4, 5, 6, 9.

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3. In order whereunto, every maker of glass shall first make entry in writing at the next excise office, of his name, and of all his furnaces, pots, pot chambers, warehouses, rooms, and other places for making or keeping of glass, or of materials for making it; and if he shall use the same, without first giving notice to the proper officer, he shall forfeit 50 l. *f. 10.*

Place of making
to be entered.

4. And he shall, before he begin to fill any pot, give 12 hours notice in writing to the officer, of the time and hour when he intends to begin, with an account of the weight of the materials, and the species of glass to be made; on pain of 50 l. *f. 11.*

Notice of begin-
ning to work.

And if the filling be not begun pursuant to such notice, the said notice shall be void. *f. 12.*

5. The officer shall be permitted at all times, by day or night, to enter into the workhouse, warehouse, or other place for making of glass; and to weigh and take account of the quantity of materials; and shall make report thereof to the commissioners or whom they shall appoint, leaving a copy (if demanded) under his hand, for the glass maker; and if he shall not leave such copy on demand, he shall forfeit 40 s. *f. 13.*

Officer to enter
and survey.

And if any person shall obstruct any officer in the execution of his duty on this act; he shall forfeit 50 l. *f. 16.*

6. And the maker shall keep just scales and weights at the place where the glass is made, and assist the officer in weighing; on pain of 50 l. *f. 14.*

Maker to keep
scales and
weights.

And by the 10 G. 3. c. 44. if he shall make use of insufficient scales or weights, he shall forfeit 100 l. but not to be prosecuted both on this and the former act.

7. Every maker within the bills shall monthly, and elsewhere, once in six weeks, make entry in writing at the next excise office, of the quantities of the materials used in each making, on pain of 20 l. which entries shall be made on oath before the commissioners within the bills, and elsewhere before the collector or supervisor. *f. 17.*

Entry of glass
made.

But no maker shall be obliged to go further than the market town where it is made, or the next market town, for the making such entries. *f. 18.*

8. The maker, within the bills, shall in four weeks, and elsewhere in six weeks after entry, pay off the duties; duty. on pain of double duty. *f. 19.*

Payment of the
duty.

9. If any pot filled with materials shall crack or break, whereby any part thereof shall become unfit for service, proof thereof to the commissioners where such glass house shall be situated, they shall make an allowance for the same. *f. 15.*

Allowance for
glass spoiled in
making.

Exportation.

10. Any person who hath paid the duty may export the glafs, and have the duty drawn back ; and if it shall be relanded, it shall be forfeited, or the value thereof, over and above the penalty of the bond given on exportation. *f.* 20, 21, 22.

And no glafs shall be imported into *Ireland*, other than the manufacture of *Great Britain* ; on pain of forfeiting the same, and the ship, and 10s. a pound. *f.* 23.

The like penalty for exporting glafs out of *Ireland*. *f.* 24.

Power of the justices.

11. The penalties to be recovered or mitigated as by the laws of excise, or in the courts at *Westminster* ; and to be employed, half to the use of the king, and half to him that shall sue. *f.* 39.

VI. Hops.

Duty on hops imported.

1. By the 9 *An. c.* 12. an additional duty of 3d. a pound is laid on all hops imported, over and above all other duties ; which shall be under the management of the officers of the customs. *f.* 1, 2, 3, 4.

And if any foreign hops shall be landed before entry and duty paid, or without warrant for landing ; the same shall be forfeited, and burnt in ten days after condemnation, and the ship also shall be forfeited, and the person concerned in importing, or aiding in putting them on shore, shall forfeit 5l. a hundred weight. 7 *G. 2. c.* 19. *f.* 1.

Duty on hops grown in Great Britain.

2. And by the said act of the 9 *An. c.* 12. there shall be paid a duty of 1d. for every pound of hops grown in *Great Britain*, cured and made fit for use ; the same to be paid by the owner within six months after they shall be cured and put in bags ; which duty shall be under the management of the commissioners and officers of excise. *f.* 1, 5.

Hop grounds to be entered.

3. In order whereunto, every person who shall plant or have growing any hops, for sale or not for sale, shall yearly on or before *Aug. 1.* give or send notice in writing under his hand, at the next office of excise, or to the officer of the district, of all the hop grounds in his possession, and of the name of the parish, township, or place, and the name of the owner or occupier ; on pain of 40s. an acre. 9 *An. c.* 12. *f.* 6.

But such person shall not be obliged, for giving notice, to go further than the next market town. *f.* 7.

And the officer who shall receive the notice, shall in five days enter the same in a book to be kept at the office for that purpose ; on pain of 40s. *f.* 7.

Excise. (*Hops.*)

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4. Also no person shall use any oust, storehouse, or other place, or any kiln for curing or keeping of hops, unless notice thereof shall have been given, on pain of 50l. Places of curing and keeping to be entire.

9 *An. c. 12. f. 8.*

And all hops shall in six weeks after gathering, be brought to be cured and bagged at such ousts or places notified, and no other; on pain of 5 s. a pound. *f. 9.*

5. The officer shall at all times, by day or night, and if in the night in the presence of a constable be permitted on his request to enter into the oust, storehouse, or other place, used by any person for growing, curing, or keeping of hops; and if the planter or owner shall obstruct him, he shall forfeit 20l. Officer to enter and survey.

9 *An. c. 12. f. 15.*

6. The owners of hops, before they respectively begin to bag or weigh their hops, shall send notices in writing under their hands to the next excise office or officer, of the day and hour when they intend to begin either to bag or to weigh; which notice, as to such as shall be bagged or weighed the first week, shall be given 24 hours before; and as to every other bagging or weighing, 48 hours; on pain of 50l. Notice of bagging and weighing.

6 *G. c. 21. f. 25.*

7. And the excise officer shall attend at the bagging of every parcel of hops, and at the weighing thereof, and shall cause the weight (the tare of the bag being abated) to be marked on every bag; and shall cause an entry of the said weight to be made in his book; and shall make return thereof in writing to the commissioners or whom they shall appoint, leaving a true copy (if demanded) of such return under his hand with the planter or owner; and if he shall neglect or refuse to leave such copy (after demand in writing, 12 *G. c. 28. f. 30.*) he shall forfeit 5l. Officer to attend at the bagging and weighing.

9 *An. c. 12. f. 11.*

And the allowance shall be made after the rate of ten pounds *per centum*, upon the weight of every bag, for the tare thereof. *f. 13.*

8. The owners shall keep at their ousts, storehouses, and places of keeping their hops, weights and scales; and permit the officer to use them; and shall not suffer any false weights to be used; on pain of 20l. Owner to keep scales and weights.

6 *G. c. 21. f. 26.*

And by the 10 *G. 3. c. 44.* a penalty of 100l. is inflicted for false scales or weights, but the offender not to be prosecuted on both acts.

9. The owners may, if they think fit, put the hops into casks, instead of bags; giving the like notice, and being subject to the same regulations, for casking as for bagging. Hops may be put into casks instead of bags.

6 *G. c. 21. f. 27, 28.*

And the officer shall cause the cask to be weighed, and the weight to be marked on the cask, and also the weight of the hops therein. *f. 28.*

Deceit in bag-
ging.

10. No person shall take any hops of foreign growth out of the bags in which they are imported, and rebag the same in *British* bagging, in order to sell or export them as *British* hops; on pain of 10*l.* a hundred weight: And if any person shall endeavour to defraud the king of the duty, by using twice or oftner the same bag, with the officer's mark thereupon; he shall forfeit 40*l.* 9 *An. c. 21. f. 23.*

Removal before
bagging.

11. No planter or owner shall (on pain of 50*l.*) remove from his oust, storehouse, or other place, any hops, until they have been cured, bagged, and weighed, and the duties ascertained; unless where the officer after notice, shall not attend the bagging and weighing. 9 *An. c. 12. f. 16.*

Concealing.

12. If any planter or owner shall conceal any hops, to avoid the duties; he shall forfeit 20*l.* and the hops concealed. 9 *An. c. 12. f. 17.*

Privately convey-
ing.

13. And if any gatherer of hops, or other person, shall privately convey any hops from the place of growing, or where they shall be put in order to be cured, bagged, and weighed, with intent to defraud the king and the owner; he shall forfeit 5*s.* a pound. 9 *An. c. 12. f. 18.*

Payment of the
duties.

14. The planter or owner shall in six months after the hops shall be cured, bagged, or weighed, pay off the duties; on pain of double duty, two thirds to the king, and one third to the informer. 9 *An. c. 12. f. 14.*

Adulterating
hops.

15. If any person shall mix with hops any drug or ingredient to alter the colour or scent; he shall forfeit 5*l.* a hundred weight. 7 *G. 2. c. 19. f. 2.*

Using other
things instead of
hops.

16. No common brewer, innkeeper, or victualler shall use any broom, wormwood, or any other bitter ingredient, to serve instead of hops; on pain of 20*l.* (Except the infusing of broom or wormwood into beer or ale by the retailer, after it is brewed and tunned, to make it broom or wormwood ale or beer.) 9 *An. c. 12. f. 24.*

Exportation.

17. Hops which have paid the duty, may be exported to Ireland. 9 *An. c. 12. f. 21.*

But there shall be no drawback of the duties. 6 *G. c. 11. f. 40.*

And no foreign hops, other than of *British* growth, shall be landed in Ireland. 7 *G. 2. c. 19. f. 1.*

Penalties how to
be recovered.

18. The penalties aforesaid (where not otherwise directed) shall be recovered and mitigated as by the laws of excise, and distributed half to the king, and half to him that shall sue. 9 *An. c. 12. f. 26.* 24 *G. 2. c. 40. f. 33.*

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19. And all hops in the custody of any planter or owner, or person in trust for him, shall be liable to the duties in arrears, and to the penalties; in the same manner as if the debtor or offender were the lawful owner. *9 An. c. 12.*

f. 19.

20. If any person shall unlawfully and maliciously cut any hop binds growing on poles, in any plantation of hops; he shall be guilty of felony, without benefit of clergy. *6 G. 2. c. 37. f. 5, 6.*

Which offence is treated of more at large in the title **Black Act.**

VII. *Leather.*

1. By the *4 W. c. 5.* and *9 An. c. 11.* and *10 An. c. 26.* certain additional duties are laid on all hides, skins, vellum and parchment imported, over and above what they are charged in the book of rates: which shall be under the management of the commissioners of the customs.

And after the duty shall be paid on importation, the officers of the customs shall cause every hide or skin to be marked, to denote the payment of the duty. *9 An. c. 11. f. 6.*

But by the *9 G. 3. c. 39.* Raw or undressed hides of steers, cows, or any other cattle (except horses, mares, and geldings), and raw or undressed skins of calves and goats, may be imported from Ireland, or any of the British American colonies, duty free, for 5 years.

2. And by the said acts of *9 An. c. 11.* and *10 An. c. 26.* certain duties are imposed on hides and skins, tanned, tawed, or dressed in *Great Britain*; and on vellum and parchment made in *Great Britain*; as follows:

On all tanned hides $1\frac{1}{2}$ d. a pound.

Calf, kips, hogs, and dog skins tanned $1\frac{1}{2}$ d. a pound.

Goat skins tanned with shomack, or otherwise to resemble *Spanish* leather, 4 d. a pound.

Sheep skins tanned for roans after the nature of *Spanish* leather, 2 d. a pound.

Sheep skins and lamb skins tanned for gloves and bazils $1\frac{1}{2}$ d. a pound.

(And by the *9 G. 3. c. 39.* Seal skins tanned or tawed, $1\frac{1}{2}$ d. a pound.)

Tanned skins not before charged 30 l. in the hundred, according to the real value.

All the above to be paid by the tanner.

Excise. (Leather.)

Horse hides dressed in allom and salt or meal, or otherwise tawed, 1 s. 6 d. a hide.

Hides of steers, cows, and all other (except horse hides) dressed in allom and salt, or meal, or otherwise tawed, 3 s. a hide.

Calve skins and kips dressed in allom and salt or meal or otherwise tawed. 1½ d. a pound.

Slinks so dressed or tawed, with the hair on, 3 s. a dozen.

Slinks so dressed or tawed, without hair, 1 s. a dozen.

Dog skins so dressed or tawed, 1 s. a dozen.

Buck and doe skins (except what paid the duty on importation) dressed in allom and salt or meal, or otherwise tawed, 6 d. a pound.

Kid skins so dressed or tawed (except what paid the duty on importation) 1 s. a dozen.

Goat skins so dressed or tawed, 2 s. a dozen.

Beaver skins so tawed, 2 s. a dozen.

Sheep skins and lamb skins so dressed or tawed, 1½ d. a pound, and no more, altho' they may have been dipped or steeped in the tanner's wooze made of bark or shomack before such dressing (3 G. c. 4. f. 13.)

All other tawed skins not before charged, 30 l. for every 100 l. value.

To be paid by the tawers or makers.

For hides and skins dressed in oil, 6 d. a pound.

Deer, goat, and beavers skins, dressed in oil, 6 d. a pound.

Calve skins dressed in oil, 8 d. a pound.

Sheep and lamb skins dressed in oil, 3 d. a pound.

All skins dressed in oil, not before charged, 15 l. in the hundred, according to the real value.

To be paid by the oil leather dressers.

For all vellum made in *Great Britain*, 3 s. a dozen.

Parchment made in *Great Britain*, 1 s. 6 d. a dozen.

But such small pieces as have been commonly called pates and tails, and are tanned after they are cut off from the hides, shall not be charged with the duty by weight, but with the duty *ad valorem*; and the same need not to be marked as is hereafter directed. 9 An. c. 11. f. 46.

3. By *tanned* hides or skins, or pieces thereof, are meant only such as are tanned in wooze made of the bark of trees or shomack; and by hides and skins *dressed in oil*, are meant such

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such as are made into leather in oil, or with any materials whereof the chiefest ingredient shall be oil; and by *tawed* hides or skins, are meant such as are dressed or made into leather in allom and salt, or meal, or other ingredients properly used by the tawers of white leather. 9 *An. c. 11.*

f. 3.

4. Collar makers, glovers, bridle cutters, and others who dress skins or hides, or pieces thereof, in oil, allom and salt, or meal, or other ingredients, and who cut and make the same into wares, shall be accounted tawers or dressers. 2 *An. c. 11. f. 28.*

Who shall be deemed tawers or dressers.

5. The value of the said hides and skins which are to pay *ad valorem*, shall be as they are worth to be sold at the next market, without respect to the duty; and the collector shall receive the duties, on the oath of such tanner, tawer, or dresser. 9 *An. c. 11. f. 14.*

Duty *ad valorem* how to be ascertained.

6. Any hide or skin which hath once paid the duty, shall not be charged under any other denomination. 9 *An. c. 11. f. 3.*

No leather to be twice charged.

7. The commissioners of the treasury shall appoint commissioners of these duties; who shall have the same power as the commissioners of the excise. 9 *Ann. c. 11. f. 13, 38.*

Officers for these duties.

8. Tanners, tawers, curriers, or dressers of hides or skins, and makers of vellum or parchment, shall give notice in writing to the officer, of their names and places of abode, and of their tanhouses, yards, workhouses, mills, or other places, where they intend to tan, taw, or dress hides or skins, or make vellum or parchment, before they use the same; on pain of 50*l.* 9 *An. c. 11. f. 15.*

Places of working to be entered.

And if any person shall not make such entry, or shall use any private tan yard, workhouse, pit, fat, mill, or place, he shall forfeit 20*l.* and the goods found in such private tan yard or place not entred, or the value thereof, shall also be forfeited. 9 *An. c. 11. f. 17.*

9. The officers at all seasonable times, in the day time, may enter into any tan yard, workhouse, warehouse, mill, or other place; and if the owner or occupier shall refuse him entrance, he shall forfeit 10*l.* 9 *An. c. 11. f. 17.*

Officers to enter and survey.

10. The said tanners and others shall give notice to the officer, of their places for drying and keeping of hides or skins, vellum or parchment, and they shall give two days notice in writing to the officer, before they take the said goods out of the mill, wooze, liquor, oil, or other materials, in order to be dried; and they shall permit the officers to take an account; and shall in two days after the taking

Notice of removing to the place of drying.

Exercise. (Leather.)

taking out of the wooze, mill, liquor, or other materials, and before the carrying away of the said goods from the place of drying, make entry with the officer of the number and quality, and verify the same on oath, to be administered by any justice of the peace, or collector or supervisor; and they shall not remove any of the said goods, from the place of drying, until the duty be first charged, entred, and marked. 9 *An. c. 11. f. 16.*

And if any person shall not send such notice of taking the goods out of the wooze or other materials, or not make due entries, or remove any the said goods contrary to this act; he shall forfeit 20 l. and also such goods unlawfully removed, or the value thereof shall be forfeited. *f. 17.*

Concealing to
avoid the duty.

11. And if any tanner or other such person shall conceal any hide or skin, vellum or parchment, or any part thereof; he shall forfeit 20 l. and also the goods concealed, or the value thereof. 9 *An. c. 11. f. 17.*

Tanners to keep
scales and
weights.

12. Tanners, and other the said persons, shall keep scales and weights; and sworn officers shall be appointed, for the weighing and other matters to be performed at every such yard or dressing place. 9 *An. c. 11. f. 18.*

And if he shall not keep just scales and weights, or shall not permit his hides or skins to be weighed, or neglect or refuse to bring the scales, or to assist at the weighing; he shall forfeit 50 l. *f. 26.*

And by the 10 G. 3. c. 44. if he shall use false or insufficient scales or weights, he shall forfeit 100 l. but not to be prosecuted both on this and the former act.

Duty to be ascer-
tained before
removal.

13. Tanners, and other the said persons, shall before any the said goods be removed from the place of dressing, drying, or keeping, give two days notice in writing to the officer (for giving of which notice he shall not be obliged to go further than the next market town); and shall permit the officer to weigh the goods chargeable by weight, and bring the scales, and assist in weighing; and shall permit the officer to take an account of the number and quality of the goods to be charged by tale; and shall ascertain the value of such goods as are to be charged *ad valorem*, by his oath to be taken before the said officer, or a justice of the peace. 9 *An. c. 11. f. 19.*

Charge by the
officer.

14. And after the duties are ascertained by weight, tale, or value respectively, the officer shall enter the same in a book, and make return thereof to the commissioners or whom they shall appoint, leaving a true copy thereof under

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under his hand, with such tanner or other person. 9 An.

c. 11. f. 20.

15. Immediately after the duty shall be ascertained, and entry thereof made, the officer shall cause every hide or skin, and every piece of a hide or skin, and all vellum and parchment, to be marked. 9 An. c. 11. f. 21. Leather to be marked.

16. And if such tanner or other person shall desire the mark to be made, on any particular part of the hide or skin; the officer shall mark it accordingly. 9 An. c. 11. f. 22. In what part to be marked.

17. And if any tanner, or other such person, shall remove from his yard or drying place any the said goods, before the duties shall be charged, and before they be marked; or if any buyer shall carry away the same before they be marked; he shall forfeit 50 l. and the said goods so unlawfully sold or removed, shall also be forfeited. 9 An. c. 11. f. 26. Removing before marked.

18. And if any person shall counterfeit the stamp, or knowingly sell any the said goods with a counterfeit stamp; he shall be guilty of felony without benefit of clergy. 9 An. c. 11. f. 44. Counterfeiting the stamp.

19. And to prevent frauds between the officers and tradesmen, all tanners, tawers, and dressers of hides, skins, vellum, and parchment, shall keep those which have not been stamped, from those which have, and also those which have been last stamped, from those which have been stamped before, for 24 hours within the bills, and for two days elsewhere; unless they shall have sooner been weighed and taken account of by the surveyor or supervisor: on pain of 10 l. 5 G. c. 2. f. 10. Leather stamped to be kept separate.

20. And they shall not remove the same for 24 hours from the stamping thereof, unless the same shall sooner have been weighed by the supervisor or surveyor, that so they may have an opportunity to re-weigh the same after the inferior officers: And if any additional weight shall be found: the said hides, or skins, and pieces thereof, shall be charged accordingly. And if such tanner, tawer, or dresser shall remove, or cause or suffer the same to be removed contrary hereunto; he shall forfeit 20 l. 5 G. 3. c. 43. f. 21. And not to be removed till after 24 hours.

And he shall keep scales and weights for such re-weighing; and bring the hides and skins and pieces thereof to the scales; and assist the surveyor and supervisor in re-weighing, and in examining from time to time the depending stock of such tanner, tawer, or dresser; on pain of 50 l. f. 22.

Payment of the duties,

21. Persons within the bills of mortality shall pay off the duties in 14 days to the commissioners, and elsewhere in six weeks to the collectors, after the said goods shall be marked. 9 An. c. 11. f. 23.

But no person shall be obliged, for payment of the duties, to go farther than the next market town. f. 24.

And persons not paying as aforesaid shall forfeit double duty; and shall not deliver out any of the said goods until the duty be paid, on pain of double value. f. 25.

Tanners to balance accounts with the officers.

22. Every tanner, and other such person, shall once in three months (if demanded) make an account with the officer, of the goods taken out of the wooze or other ingredients, and of his entries thereof, and balance the said account by the goods which have been charged, and those which are in his possession unmarked and uncharged; on pain of 50l. 9 An. c. 11. f. 27.

Exportation.

23. On exportation of hides or skins, tanned, tawed, or dressed, and marked, and of boots, shoes, gloves, or other manufactures made of leather, chargeable for the duty by weight; a drawback shall be allowed of two thirds of the duty. 9 Ann. c. 11. f. 39. 12 An. f. 2. c. 9. f. 65.

Except that for tanned leather manufactured into boots, shoes, gloves, and other wares; a drawback of 1½d. for a pound weight, shall be allowed in lieu of the said two thirds of the duty. 12 An. f. 2. c. 9. f. 64.

And a drawback of 1d. for a pound weight of seal skins tanned or tawed, shall be allowed in lieu of any other drawback. 9 G. 3. c. 39.

Penalties how recoverable.

24. Any two justices residing near, may hear and determine offences; who shall on information or complaint in three months after seizure made, or offence committed, summon the party accused, and the witnesses, and on appearance or contempt of the party (on proof of notice given) shall examine witnesses on oath, and give judgment, and issue warrants for levying the pecuniary penalties by distress and sale (if not redeemed in six days). 9 An. c. 11. f. 36.

Mitigation.

25. And they may mitigate the penalties, the charges of the officers being always allowed over and above the mitigation; and so as the mitigation do not reduce the penalties to less than one fourth part, over and above the charges. 9 An. c. 11. f. 37.

Appeal.

26. Persons aggrieved may appeal to the next sessions, who may determine the same, and issue warrants for levying the penalties. 9 An. c. 11. f. 36.

27. And

27. And no certiorari shall be allowed. 9 *An. c. 11.* Certiorari, *f. 47.*

VIII. Linen cloth, and silks.

1. By the 10 *An. c. 19.* and the 12 *An. st. 2. c. 9.* Duty on importation. There shall be paid for all chequered and striped linens, and upon all linens printed, painted, stained, or dyed, after the manufacture, or in the thread or yarn, in any foreign parts, which shall be imported, and may lawfully be worn, over and above other duties, 30l. for every 100l. value; which shall be under the management of the commissioners of the customs.

Except lawns, striped or chequered linens, being all white, and neckcloths striped at the end only, and also barras, or packing canvas, and buckrams. 12 *An. st. 2. c. 9. f. 5.* 12 *An. st. 2. c. 19.*

And after the duty is paid, the said printed linens imported shall be stamped by the officers of the customs. 10 *An. c. 9. f. 68.*

And by the 7 *G. 3. c. 28.* certain additional duties on importation are imposed; viz. For every ell of linen cloth or sheeting above one yard wide (except Flanders Holland cloth) 3d.; and for every ell of linen cloth called Drilling, 3d.

And by the 7 *G. 3. c. 58.* for every ell of foreign linen called Packing canvas, Spruce Elbing, or Queensborough canvas, one farthing; for every ell of Dutch barras and Hessian canvas, one halfpenny; and for every yard of foreign lawn bleached in Holland, commonly called Holland whited lawn, one penny.

2. By the 10 *An. c. 19.* and the 12 *An. st. 2. c. 9.* Home duties. Over and above the duties payable on importation of any of them, there shall be paid, for all silks printed, stained, or painted in *Great Britain*, (silk handkerchiefs excepted) 12d. a yard in length, reckoning half a yard for the breadth. (And by the 7 *G. 3. c. 47.* Whereas doubts have arisen whether ribbands and silks so printed, stained, or painted, being less than half a yard in breadth, are within the meaning of the said acts; it is declared, that all ribbands and silks printed, stained, or painted in *Great Britain*, tho' less than half a yard in breadth, are within the meaning thereof, and liable to the said duties, according to the proportions in which such ribbands and silks are made. *f. 6.*)

And

Excise. (*Linen, &c.*)

And for all *silk handkerchiefs* so printed, stained, or painted in *Great Britain*, 4d. a yard square,

And for all *callicoes* printed, stained, painted, or dyed in *Great Britain*, 6d. for every yard in length, reckoning one yard wide, or within one eighth thereof.

And for all *linen* stuffs printed, stained, painted, or dyed in *Great Britain*, 3d. a yard in length, reckoning yard wide.

Except such callicoes, linens, and fustians as shall be dyed throughout of one colour only, and stuffs made of woollen, or whereof the greatest part in value shall be woollen.

Observation as to
callicoes.

3. But it is to be observed, that such painted or stained callicoes cannot be of use for wearing apparel, and therefore the printing or staining of them must be chiefly in order for exportation; for by the 7 G. 3. c. 7. it is enacted, that no person shall use or wear in any apparel, any printed, painted, stained, or dyed callico; on pain of 5l. to the informer, on conviction on the oath of one witness before one justice; who shall, on information on oath in six days after the offence, summon the party, and upon his appearance or contempt examine the matter, and on proof by confession, or oath of one witness determine the same, and on conviction cause the penalty to be levied by distress and sale, rendering the overplus (charges of distress and sale being first deducted): Provided that persons aggrieved may appeal to the next quarter sessions, giving six days notice. *s. 1.*

And if any person shall offer the same to sale, or any household furniture made up of or mixed therewith, unless for exportation; he shall forfeit 20l. half to the informer, and half to the poor of the parish or place where the offence shall be committed, to be recovered in the courts at *Westminster*, with full costs, on prosecution in six months; and if he is a steward or other officer of a corporation, he shall also forfeit his office. *s. 2, 4.*

And no person shall use the same in any household furniture, on like pain of 20l. *s. 3.*

But this shall not extend to callicoes made up in household furniture before *Dec. 5. 1722.* *s. 6.*

Nor to callicoes dyed all blue. *s. 11.*

But the same shall extend to stuff made of cotton, or mixed therewith, printed or painted; and to callico chequered or striped; and to callico stitched or flowered in foreign parts with any colour (muslins, neckcloths, and fustians excepted). *s. 10.*

But

But it shall be lawful to use stuff made of linen yarn and cotton wool manufactured and printed or painted in Great Britain, provided the warp thereof be entirely linen yarn. 9 G. 2. c. 4.

4. Every such printer, painter, stainer, or dyer shall give notice in writing at the next office, of his name and place of abode, and where he intends to work; on pain of 30 l. 10 An. c. 19. f. 71. ^{Houses to be entered.}

And by the 1 G. 2. c. 36. Where any person shall take upon him to print, paint, stain, or dye any silks, linens, or stuffs at any other place than the place of his usual residence or exercise of his trade; he shall first make entry with the officer of the division, where he intends to do the same, and pay down the duties, on pain of 50 l. and also the said goods shall be seized and forfeited. f. 21.

5. The officers shall at all times by day or night, and if by night in presence of a constable, be permitted on request to enter such person's house, workhouse, drying place, warehouse, field, or other place used by him, and take an account, and shall make thereof a report in writing to the commissioners or to whom they shall appoint, leaving a copy if demanded, under his hand; and if he shall make default in leaving such copy (after demand in writing, 12 G. c. 28. f. 30.) he shall forfeit 40 s. 10 An. c. 19. f. 75. ^{Officers to enter and take account.}

6. And none of the said persons shall obstruct the officer in execution of his duty; on pain of 20 l. 10 An. c. 19. f. 78. ^{Obstructing the officer.}

7. Every such printer and other person, shall once in six weeks make entry in writing at the next office, on oath before the collector or supervisor, of all such goods by them made, containing the kinds and quantity, and the names and places of abode of the owners (if they are not their own); on pain of 50 l. 10 An. c. 19. f. 72. ^{Entry of goods made.}

But no person shall be obliged to go to make entry, further than the next market town. 10 An. c. 19. f. 73.

8. If the officer shall miss any quantity of the said goods, whereof he had taken an account in his last survey, and shall not on reasonable demand receive satisfaction what is become of the same; the officer may charge such person with the duties of the goods so missing, as if they were printed, painted, stained or dyed. 10 An. c. 19. f. 77. ^{Officer may charge for goods missing.}

Goods concealed.

9. And if they shall conceal any the said goods, to avoid the duty; they shall forfeit 20 l. And all the silks, callicoes, linens, and stuffs found in any private workhouse, or other place whereof no notice hath been given, or the value thereof, shall be forfeited. 10 *An. c. 19. f. 82.*

Payment of the duties.

10. They shall, within six weeks after entry, clear off the duties; on pain of forfeiting double: and if they shall deliver out any such goods, after default in payment of the duties, before the same shall be cleared off; they shall forfeit double value of the goods. 10 *An. c. 19. f. 74.*

Removing before stamped.

11. And they shall not remove any the said goods, till the officer hath taken account thereof, and until each piece be stamped or marked; on pain of 20 l. And the same so carried away without being marked, and found in the possession of any draper or other person for his use, for sale, may be seized or the value thereof recovered. 10 *An. c. 19. f. 79.*

Goods surveyed to be kept separate.

12. And they shall keep the goods which have not been surveyed, separate from the goods which have been surveyed; on pain of 5 l. 10 *An. c. 19. f. 81.*

Search for goods unstamped.

13. And on oath by any credible person, that he hath reason to suspect, that any the said goods are in the possession of any draper or other person dealing therein, or of any other to his use, for sale, unstamped; the commissioners within the bills, or any two justices elsewhere, may issue their warrants, requiring some officer of the said duties (with a constable) in the day time to search for the same, and to open doors, chests, trunks, and package, and to seize such goods, and bring them to the next office. 10 *An. c. 19. f. 98.*

Goods found unstamped may be seized.

14. And if any the said goods shall be found in any place, on land or water (except on shipboard for exportation) without being marked with a stamp or seal, denoting that the duties have been paid or charged; the same shall be forfeited, and may be seized by any officer of the customs or excise, and the person in whose custody they are found shall forfeit 50 l. 5 *G. c. 11. f. 15.*

Counterfeiting the stamps.

15. And if any person shall counterfeit the stamp, he shall be guilty of felony without benefit of clergy. 10 *An. c. 19. f. 97.*

And if any person shall knowingly sell any the said goods with a counterfeit stamp, he shall forfeit 100 l. and be set in the pillory in some publick place two hours. *id.*

16. The said goods having paid the duty may be ex-ported; and there shall be a drawback of the duties. 10

An. c. 19. f. 94, 95, 96. 12 An. st. 2. c. 9. f. 15.

17. The penalties (except as is above mentioned in relation to callicoos) may be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster*; and shall be employed half to the use of the king, and half to him that shall discover, inform, or sue. 10 *An. c. 19. f. 92. 24 G. 2. c. 40. f. 33.* Power of the justices.

18. And all the utensils and instruments for printing, painting, staining, or dying such goods, in custody of any the said persons, or any other to his use, shall be liable to all arrears of the duty, and to all penalties concerning the same, in like manner as if such person were the lawful owner. 10 *An. c. 19. f. 83.* Utensils liable.

19. By the 4 *G. 3. c. 37.* (which establisheth the corporation of the English linen company for making cambricks and lawns) it is enacted, that the commissioners of excise, where there shall be a manufactory of cambricks or lawns, or of goods known under that denomination, shall appoint the supervisor or other officer to seal the same; for which they shall have such fee as the commissioners shall appoint. *f. 17, 18.* Cambricks and lawns to be marked by the excise officers.

The manufacturer to give notice in writing to the officer, of the finishing of every piece, before it is taken out of the loom; who shall seal the same at both ends; on pain that such manufacturer taking the same out of the loom without having given such notice, and having the same sealed as aforesaid, shall forfeit 5*l.* and every such piece shall be forfeited, and may be seized by any officer of the customs or excise. *f. 19.*

And the officer, with convenient speed, after notice, shall mark, and also number each piece; and make entry in writing, in books to be provided at the expence of the manufacturer, of the number set to each piece, the length thereof, and the number of threads in the warp; on pain of 10*l.* *f. 20.*

If the officer shall mark any not made in England, or after the same is taken out of the looms; he shall forfeit 50*l.* for each piece to him who shall sue, and forfeit his office, and be incapacitated to hold any other office of trust under the crown. *f. 21.*

If any person shall by bribery, or otherwise, prevail upon the officer to commit such offence, he shall forfeit 100*l.* and stand in the pillory two hours; and if he shall offer any such bribe, he shall forfeit 50*l.* *f. 22.*

And

Excise. (*Linen, &c.*)

And the officer shall yearly, in the month of June, transmit to the commissioners an account of all goods he shall have stamped, and a copy of the entries made; on pain of dismissal: And he, or his executors, shall deliver up the seals, on demand from the commissioners; on pain of 200 l. *f. 23.*

Cambricks and lawns made in England, found unstamped, shall be forfeited, and may be seized by any officer of the customs or excise; and after condemnation shall be sold: And every person who shall sell or expose to sale, or have in his custody for that purpose, any cambricks or lawns made in England, unmarked, shall forfeit 200 l. *f. 24.*

But the said goods so seized, condemned, and sold, shall not be worn in this kingdom, but exported, and not be sold but upon condition of exportation; and shall not be delivered out of the warehouse, until bond be given, to the satisfaction of the collector, in double penalty of the goods, that the same shall be exported, and not relanded. *f. 25.*

If any person shall counterfeit the seal appointed by this act; or shall import any foreign cambricks or lawns, having such counterfeit mark thereon; or expose the same to sale knowing the stamp thereon to be counterfeited; he shall be guilty of felony without benefit of clergy. *f. 26.*

All goods condemned in pursuance of this act, and all pecuniary forfeitures, (not herein otherwise directed,) shall be sued for and recovered in any of his majesty's courts of record at *Westminster*, in the name of the attorney general, or of such officer as aforesaid; and be applied (after all charges deducted) half to the use of the king, and half to the officer or other person who pursuant to the directions of this act shall seize, inform, or sue. *f. 28.*

And if any question shall arise, where the goods were manufactured; the proof shall lie on the owner or claimer, and not on the officer. *f. 31.*

IX. Malt.

No malt to be imported.

1. By the 12 *An. st. 1. c. 2.* No malt shall be imported, on pain of forfeiting the same, and the value thereof. *f. 26.*

And if it is brought in from *Scotland* by sea, it shall be entred at the port of landing, and pay the like duty as

English malt, unless a certificate is produced that it hath paid the duty of 4^d. a bushel in *Scotland*, and then it shall only pay 4^d. more, to make it equal with the *English*: and if it is brought by land, it shall be carried through *Berwick* or *Carlisle*, and there pay in like manner; on pain of forfeiting the same or the value thereof; and if it is carried beyond *Berwick* or *Carlisle*, without entry or payment, the officers of excise may seize the same. 33 G. 2. c. 7. s. 10. 1 G. 3. c. 3. s. 6.

2. By the 12 An. st. 1. c. 2. (which is continued yearly), and by the 33 G. 2. c. 7. there shall be paid by the maker for all malt made in *England* (except it be made for exportation only. 12 G. c. 4. s. 48.) a duty of 9d. a bushel. Duty on malt.

3. And every round bushel with a plain bottom, 18¹/₂ inches wide throughout, and eight inches deep, shall be deemed a legal *Winchester* bushel. 12 An. st. 1. c. 2. s. 7. What shall be deemed a bushel.

4. The said duty shall be under the management of the commissioners and officers of excise. 12 An. st. 1. c. 2. s. 3. Officers for these duties.

5. No person making malt (other than compounders) shall set up, alter, or use any cistern, uting fat, utensil, or other vessel, for the wetting or steeping barley or other corn, or any kiln, floor, room, or other place for making or keeping of malt, without first giving notice in writing at the next office of excise; or shall keep or use any private cistern or other vessel for the wetting his barley or corn, other than such as are known and made use of in his common malting house, on pain of 50l. 12 An. st. 1. c. 2. s. 36. Places of making to be entered.

6. The officer shall in the day time be permitted, on request, to enter the house, malt house, and all other places belonging to or used by any maker of malt (either for sale or not for sale); and to gage all cisterns, uting fats, and other vessels used for wetting or steeping corn, and take account of the quantity; and shall thereof make return to the commissioners, or whom they shall appoint, leaving a copy with such maltster; and if any such maltster shall refuse to permit such officer, he shall forfeit 20l. 12 An. st. 1. c. 2. s. 4. Officer to enter and survey.

Or if he shall refuse or neglect (after demand in writing, 12 G. c. 28. s. 30.) to leave a copy of the gage for the maker, at the time of taking the gage; he shall forfeit 40s. s. 31.

And by another clause in the said act, the officer shall on request be permitted, by night or by day, but if in

the night then in presence of a constable, to enter the house, malt house, and other place belonging to or made use of by any maker of malt for sale, common brewer, innkeeper, victualler, distiller, or vinegar maker making malt, to gage and take an account of the corn wetting or wetted; and if such maker shall refuse to permit him, he shall forfeit 20 l. *f. 34.*

Obstructing the officer.

7. And by a general clause in the 1 G. 2. c. 2. If any maker of malt for sale, shall obstruct any officer of excise, in the execution of any of the powers given him for securing the said duties, he shall forfeit 10 l. *f. 4.*

Manner of gaging.

8. The officers shall measure corn making into malt, by the gage only, and not by the bushel. 12 An. 2. c. 2. *f. 17.*

Time for making.

9. No person shall make any barley malt (except in June, July and August) but that the same shall have in making thereof, that is in the fat, floor, steeping and drying three weeks at least; nor in June, July, and August, but that it shall have 17 days at the least (unless it be for his own house): on pain of forfeiting for every quarter 2 s. half to the king, and half to him that shall sue: And the justices in sessions, and the steward in the leet, may hear and determine the same, as well by presentment of 12 men, as by accusation or information of two honest witnesses. 2 & 3 Ed. 6. c. 10. *f. 2, 3, 4, 5.*

Dressing of malt.

10. If any person shall put to sale any malt not well trodden, rubbed, and fanned, whereby there may be conveniently fanned out of one quarter half a peck of dust or more; he shall forfeit for every quarter 20 d. half to the king, and half to him that shall sue in like manner in the sessions or leet. 2 & 3 Ed. 6. c. 10. *f. 3, 4.*

Mixing bad malt with good.

11. No person (except it be for his own house) shall mingle any malt, not well made, or made of mow burnt, or spired barley, with other good malt, and after put the same to sale; on pain to forfeit for every quarter 2 s. half to the king, and half to him that shall sue in like manner in the sessions or leet. 2 & 3 Ed. 6. c. 10. *f. 2, 3, 4, 5.*

And the bailiffs and constables of the town where malt shall be made, or put to sale, may search the same: And if they shall find it to be evil made or mingled with evil malt, they shall with the advice of one justice cause it to be sold to such persons, and at such reasonable prices, and under the common price of the market, as to him shall seem necessary and expedient. *f. 4.*

Pressing malt in the cistern,

12. If any corn, in any cistern, uting fat, or couch, steeping or steeped, in order to the making thereof into malt

malt by any maltster (other than compounders) shall be found so hard, close, and compact, as it could not be, unless it had been forced together to prevent its swelling; every maltster and maker of malt (other than compounders) where the same shall be found, shall forfeit 5 s. a bushel; and proof being made thereof, the same shall be conclusive evidence of the fact; and subject the maltster to the penalty. 1 G. 3. c. 3. f. 17.

13. No maker of malt (other than compounders) shall mix corn of one wetting with corn of a former wetting; or mix any of his couches or floors, with corn of a former wetting, before the same is put on the kiln for drying: on pain of 5 s. a bushel. 2 G. 2. c. 1. f. 11.

Mixing with corn of a former wetting.

14. If any dealer in malt, shall, with malt, fraudulently mix any unmalted corn, or sell or expose to sale any such mixture, or shall attempt to ship off any such mixture, in order to export the same; he shall forfeit 5 s. a bushel. 1 G. 3. c. 2. f. 13.

Mixing malt with unmalted corn.

15. If any maltster shall fraudulently convey, or cause or suffer to be conveyed away, from the cistern, uting fat, or other wetting place or utensil, any steeping or part of any steeping of corn making into malt; and shall mix the same with any couch or floor of other corn making into malt, which is then depending and in operation, and which hath been gaged or charged with the duty in the couch, he shall forfeit 100 l. 1 G. 3. c. 3. f. 18.

Mixing malt gaged with malt ungaged.

16. If any maker of malt shall fraudulently conceal any malt from the view of the gager; he shall forfeit 10 s. a bushel. 12 An. st. 1. c. 2. f. 35.

Concealing malt to avoid the duty.

17. If any maltster shall fraudulently convey, or cause or suffer to be conveyed away, from the cistern, uting fat, or other wetting place or utensil, any steeping or part of any steeping of corn making into malt, so that no gage thereof can be taken in the couch by the officer; he shall forfeit 100 l. 1 G. 3. c. 3. f. 18.

Concealing malt to avoid being gaged in the couch.

18. Out of every 20 bushels charged by the gager, there shall be an allowance made of malt charged in the uting fat, cistern, or other vessel, wherein the same shall be found wetting or steeping, or on the floor within 30 hours after the same shall be thrown out of such vessel,—of four bushels, for the difference between the quantity when it is wet and swoln, and when it is converted into dry malt. 12 An. st. 1. c. 2. f. 20.

Allowance for malt swelling.

And if any corn that hath been steeped be found working or growing upon the floor before it is put upon the kiln, which when dried will not answer so great a quantity

from the floor as from the cistern; out of every 20 bushels so charged upon the floor, there shall be allowed to the maker of the malt which shall be gaged upon the floor, after it hath been thrown out of the cistern 30 hours or more, and before it shall be dried, ten bushels, for the difference between the quantity when it is making upon the floor, and when it is dried. 12 *An. st. 1. c. 2. f. 28.*

But if any maltster shall not wet or steep his barley or other corn, in the cistern, using fat, or other vessel, so as the same be covered with water, and continue so covered, for 40 hours before he take the water from it; he shall not be intitled to the said allowance of 4 bushels in every 20 as aforesaid. 33 *G. 2. c. 7. f. 64.*

And in order that it may be ascertained when such corn is begun to be wetted or steeped, and to prevent frauds in mixing corn with corn steeping; the maltster, within a city or market town, shall give 24 hours, elsewhere 48 hours notice in writing to the officer, of the hour or time of the day when he intends to wet corn or grain to be made into malt: And if he shall not begin, and immediately after proceed to cover the whole thereof with water, at the time mentioned in the notice, or within 3 hours after, the notice shall be void; and he shall be obliged to give a fresh notice before he begin. And he shall not begin, but between 4 in the morning, and 9 in the evening. And if he shall not give such notice; or having begun to wet such corn, shall not immediately proceed to cover the whole with water, and continue the same covered for 40 hours; or begin to wet any but between 4 in the morning and 9 in the evening; or after the officer hath taken account of the corn steeping, shall add any fresh corn or grain; he shall forfeit 100 l. 3 *G. 3. c. 13.*

Entry of malt made.

19. The maltster shall monthly make entry at the office of excise, of all the malt made (either for sale or not for sale) in such month; on pain of 10 l. 12 *An. st. 1. c. 2. f. 4.*

Payment of the duty.

20. And he shall, within four months after entry, pay off the duties, on pain of forfeiting double; and after such default, he shall not sell or carry out any malt until the duty is paid, on pain of double value. 12 *An. st. 1. c. 2. f. 6.* 1 *G. st. 2. c. 2. f. 8.*

Drawback of the duty for malt damaged.

21. After the duty is paid, if any quantity shall be damaged by the sinking of the vessel in which the malt shall be transported from one part of the kingdom to another; the justices shall at the next sessions, on proof of such damage and of the payment of the duty, settle the quantity of the damage,

damage, and the allowance to be made in respect thereof, and give a certificate of the sum allowed, which shall bear the same proportion to the whole duty, as the damage shall bear to the value of the malt: on producing of which certificate, the officer shall repay or allow to the proprietor the sum certified. 12 An. st. 1. c. 2. f. 14.

But where such loss shall happen, the person who shall sustain the same, shall three days before the next sessions, leave notice thereof in writing with the collector of the district where the loss shall happen, and of his intention of applying to the said sessions. f. 15.

22. After the duty is paid, if any malt shall be destroyed by fire, by burning of the place where it is kept; or perish by water, by casting away of the vessel in which it is transported; the owner may make proof thereof by two witnesses on oath, and of his having paid the duty, at the next quarter sessions, where such accident shall happen; who shall grant a certificate of such loss, on producing of which, the duty shall be repaid. 12 An. st. 1. c. 2. f. 27. Drawback for malt perished.

23. The commissioners, or such persons as they shall appoint, and in default of such appointment the collector and supervisor for the division, may compound for the duties of malt made to be consumed in private families, at 5s. a head by the year; and the houses of such persons compounding shall not be liable to the duty, or to the survey of the officers. 12 An. st. 1. c. 2. f. 11. Compounding.

But if any such person shall sell or deliver out any malt, or shall permit any other person to make malt in his house, or shall sell any malt liquor, or shall have more persons in his family than he compounds for, without giving notice of them to the officer of excise at or before the next quarter day; he shall forfeit 5l. and lose the benefit of his composition, and for every bushel of malt so fraudulently sold or made, he shall forfeit 20 s. f. 12.

24. No malt entred and made for exportation only, shall be liable to the duties; and no drawback shall be allowed for any malt exported. 12 G. c. 4. f. 48. 33 G. 2. c. 7. f. 14. Exportation.

But the maker shall be allowed, in consideration of his extraordinary charge and trouble, 3d. for every quarter made for exportation. 12 G. c. 4. f. 59.

And by the 1 G. 3. c. 3. There shall be allowed for every 20 quarters of grain made into malt for exportation, thirty quarters of malt, and no more, on exportation, tho' by steeping it shall run out into any greater quantity. f. 9.

And the maker, before he shall begin to wet or steep any steeping of corn to be made into malt for exportation, shall

shall leave notice in writing with the officer, of the quantity of corn intended to be contained in each steeping, on pain of 50 l. and the same shall be kept separate from all other corn to be made into malt for home consumption, on pain of 5 s. a bushel, 12 G. c. 4. f. 49, 58.

And no maker of malt shall begin to wet corn to make into malt for exportation, above six days before all the corn he may have working on his floors for home consumption shall be dried off; nor shall he begin to wet corn for home consumption, above six days before all the corn on his floors for exportation be dried and locked up; on pain of 5 s. a bushel. f. 50.

And the maker shall keep the whole quantity of his corn making into malt for exportation, of one steeping or wetting, when the same shall be on the kiln, or after it shall be taken off the kiln, separate from any former steeping or wetting, until it hath been measured in presence of the officer; on pain of 50 l. 3 G. 2. c. 7. f. 16.

And the officers, during the steeping of the corn so intended for exportation, and till it be dried and locked up, may gage and take an account thereof, in all its operations, as in case the duties were to be charged thereon. 12 G. c. 4. f. 52.

And persons opposing the officers in the execution of this act, shall forfeit 50 l. 12 G. c. 4. f. 58.

And the said maker shall give notice in writing to the officer, or leave notice at the next excise office, of the hour when he intends to take any malt off the kiln, that he may attend the measuring; and after it has been measured, it shall (on pain of 50 l.) be immediately carried on ship-board, or else into storehouses, to be provided by such maker, to be there kept apart from all other malt, under two locks, one to be provided by the proprietor, and the other by the officer at the expence of the proprietor, whereof one key to be kept by the proprietor, and the other by the officer, till the same be delivered out for exportation. 12 . c. 4. f. 51, 58. 3 G. 2. c. 7. f. 17.

And if he, or any person with his privity, shall open such lock, or make other entrance into the place, or carry any of it away, without consent of the officer, or notice given to him; he shall forfeit 100 l. 3 G. 2. c. 7. f. 18.

And when any maker or proprietor shall be desirous to take away any of the malt for exportation, and shall thereof give notice in writing to the officer 40 hours before the time he shall desire to take out the same, expressing in such notice the quantity of the malt, and the port to which it

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is to be removed; the officer shall attend at the place where the malt is locked up, and see it measured and delivered out. 12 G. c. 4. f. 53.

And the officer shall keep an account of the malt so delivered out, and of the person to whom it belongs, and shall give such person a certificate to the officer of the division to which it is intended to be removed, who shall file the same, and make an entry thereof; and if the proprietor shall neglect to deliver such certificate, he shall forfeit 50 l. 12 G. c. 4. f. 54.

And persons intending to ship malt for exportation, shall give at least 48 hours notice before they begin to put in on board, to the officer of the port in writing, of the hour when such shipping is intended to be begun, and the name of the ship; on pain of 5 s. a bushel. 12 G. c. 4. f. 57.

And during the shipping, at all such times as the proprietor shall not be actually shipping merchandizes, the hatches of the ship shall be kept locked with two locks at each hatch, one to be provided and the key kept by the proprietor, and the other by the officer; and the hatches shall be so kept locked, from the time the ships shall be loaded till they be ready to sail. 12 G. c. 4. f. 56.

And persons breaking open the hatches of any ship so locked up, shall forfeit 50 l. 12 G. c. 4. f. 58.

And the officers may not only attend the measuring of such malt, but continue on board the ships till they be cleared of their ports. 12 G. c. 4. f. 55.

And if it shall be relanded after shipping for exportation, besides the penalty of the bond which shall be given for its exportation, the same shall be forfeited, and treble the value. 1 G. 3. c. 3. f. 11.

And the maker who shall use any such storehouse for keeping of malt for exportation, shall every nine months after the last clearing, clear out the same on pain of 50 l. 3 G. 2. c. 7. f. 20. Or 5 s. a bushel. 12 G. c. 4. f. 57. And by the 1 G. 3. c. 3. he shall clear out in 15 months; on pain of 50 l. f. 15, 16.

And if any unmalted oats or barley be found mixed among malt shipped for exportation, the person shipping the same shall forfeit 5 s. a bushel. 6 G. c. 21. f. 4.

And if ground malt shall be exported, it shall be computed at so many bushels as it contained before it was ground. 12 An. st. 1. c. 2. f. 30.

[But, finally, by the 11 G. 3. c. 1. which hath continuance till the 20th day after the commencement of the next session of parliament, no malt shall be exported.]

Power of the
justices.

25. The penalties relating to this article (except where it is otherwise above directed) shall be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster*; and be employed half to the use of the king, and half to him that shall sue. 12 *An. st. 1. c. 2. f. 9.* 24 *G. 2. c. 40. f. 33.*

Appeal.

26. Persons aggrieved by any judgment of the justices, may appeal to the next quarter sessions, giving six days notice in writing: but if there be not six days between the orders of the justices and the sessions, the appeal may be at the second sessions. 12 *An. st. 1. c. 2. f. 37, 38.* 1 *G. 2. st. 2. c. 16. f. 3.*

And the sessions may award costs to either party, to be levied by warrant of the justices or two of them, on the goods of the party. 12 *An. st. 1. c. 2. f. 38.*

Certiorari.

27. And no certiorari shall be allowed, to set aside any order of the justices. 12 *An. st. 1. c. 2. f. 37.*

Malt liable to
the duties and
penalties.

28. And all malt in custody of the maker, shall be liable to the duties and penalties, in the same manner as if he were the lawful owner. 12 *An. st. 1. c. 2. f. 10.*

X. Paper.

Duty on paper
imported.

1. By the 10 *An. c. 19.* and 12 *An. st. 2. c. 9.* (which are in part altered and explained by the 12 *An. st. 2. c. 19.* and 11 *G. c. 7.*) certain duties are imposed on paper imported; which shall be under the management of the commissioners of the customs.

But old rags, old ropes, or junks or old fishing nets may be imported duty free. 11 *G. c. 7. f. 10.*

Duty on paper
made in Great
Britain.

2. And by the said acts of 10 *An. c. 19.* and 12 *An. st. 2. c. 9.* certain duties are laid on all paper made, and also on all paper painted in *Great Britain*, as followeth:

	s.	d.
For every ream (at 20 quires of 24 sheets each } to the ream) of demy fine	2	3
Demy second	1	6
Crown fine	1	6
Crown second	1	1½
Fool's cap fine	1	6
Fool's cap second	1	1½
Fine pots	1	6
Second pots	0	9
Brown large cap	0	9
Small ordinary brown	0	6

Whited

Whited brown 9 d. a bundle, each bundle containing 40 quires.

Pasteboards, mildboards, and scale boards, 3 s. a hundred weight.

All other paper not particularly charged, after the rate of 18 l. for every 100 l. value.

Painted paper (beside the duty paid for the paper before painting) 1½ d. a yard square.

But pasteboard made of paper that hath paid the duty, shall not be charged with further duty.

And books printed at *Oxford* or *Cambridge*, in *Latin*, *Greek*, *Oriental*, or northern languages, shall have a drawback of the duty on paper.

The said paper paying *ad valorem* shall be computed as it shall be worth to be sold at the next market town, by the oath of the maker or his chief workman, according to his knowledge and belief, to be taken before the collector or supervisor.

3. The commissioners of the treasury shall appoint commissioners of these duties; and they shall substitute inferior officers. *10 An. c. 19. f. 41.* Officers of the duties on paper.

4. The maker or painter shall give notice in writing at the next office, of his name and place of above, and where he intends to make the same; on pain that if he makes any before such notice, he shall forfeit 30 l. *10 An. c. 19. f. 43.* Places of making to be entered.

And no person shall use any place for drying the same, or making it fit for use, other than such common place whereof he hath given notice; on pain of 20 l. *f. 44.*

And all paper, materials, and utensils found in any private workhouse, or other place, for which no entry hath been made or notice given, shall be forfeited. *f. 54.*

5. The officer shall by day or night, and if in the night in presence of a constable, be permitted on request to enter into the house, mill, yard, drying house, warehouse, or other place, and take an account, and make report thereof to the commissioners or whom they shall appoint, and leave a copy (if demanded) of such report under his hand with the maker; and if he shall not leave such copy (after demand in writing, *12 G. c. 28. f. 30.*) he shall forfeit 40 s. *10 An. c. 19. f. 48.* Officer to enter and take account.

And he shall be permitted to take an account of the quantity of rags, cordage, and other materials, and of all paper in the possession of any painter or stainer, and of their proceedings in making, or in painting or staining it. *10 An. c. 19 f. 50.*

6. And

Excise. (Paper.)

Mark on paper
before painting.

6. And before any paper shall be printed, painted, or stained, the officer shall be permitted to take account of the dimensions, and shall stamp or seal every sheet and piece, to denote that such account hath been taken; and if the officer shall miss any quantity whereof he had so taken an account, and shall not on reasonable demand receive satisfaction what is become of it, he may charge the duties for it. 1 G. 2. c. 36. f. 17.

Obstructing the
officer.

7. And if any person shall obstruct any officer in the execution of his duty, he shall forfeit 20 l. 10 An. c. 19. f. 50.

Removing before
account taken.

8. No maker shall remove any paper of which no account hath been taken, without giving two days notice to the officer; on pain of 20 l. 10 An. c. 19. f. 51.

And no person shall remove any such painted paper, until the officer hath taken an account of the quantity thereof, and until every piece or parcel shall be marked or stamped; on pain of 20 l. and the said paper being found in the possession of any stationer or other dealer, or other person for his use, shall also be forfeited. 1 G. 2. c. 36. f. 18.

Concealing from
the officer.

9. And the maker or stainer concealing any paper or materials, shall forfeit 20 l. 10 An. c. 19. f. 53.

Paper unsurveyed
to be kept separate.

10. And the maker and stainer shall keep separate the paper which is unsurveyed, for 48 hours after making or staining, unless it shall be sooner surveyed by the officer; on pain of 5 l. 10 An. c. 19. f. 52.

Entry of paper
made.

11. The maker or painter shall once in six weeks make entry on oath at the next office, of all paper made by him fit for use, with the kinds and quantities; on pain of 50 l. 10 An. c. 19. f. 45.

But no person shall be obliged to go to make entry, further than the next market town. f. 46.

Payment of the
duty.

12. And the duty shall be cleared off in six weeks after entry, on pain of double duty; and after default in payment, no person shall sell or deliver any out, till the duty is cleared off, on pain of double value of such paper sold or delivered out. 10 An. c. 19. f. 47.

Exportation.

13. Paper that hath paid the duty may be exported, and the duties shall be drawn back. 10 An. c. 19. f. 57, 58, 59.

But there shall be no drawback allowed on foreign paper exported. 10 G. 2. c. 27.

Power of the
justices.

14. All the excise laws shall be in force for managing these duties; and the penalties shall be sued for, levied, mitigated

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Excise. (Paper.)

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mitigated and disposed of, as by the laws of excise.

10 *An. c. 19. f. 60, 61.* 24 *G. 2. c. 40. f. 33.*

15. And all paper, materials, and utensils, in custody of the maker or stainer, or of any to his use, or in trust for him, shall be liable to all duties in arrear, and to all forfeitures relating to the said duties, in the same manner as if the offender or debtor were the lawful owner.

Paper and utensils liable to distress.

10 *An. c. 19. f. 55.*

For the stamp duties on paper, see title *Stamps*.

XI. Plate.

Importation.

By the 4 *W. c. 5.* and 6 *G. c. 11.* additional duties are laid on plate imported, over and above what is charged in the book of rates: which shall be under the management of the commissioners of the customs.

True making of plate.

1. To prevent frauds in the true making of plate it is enacted by the 12 & 13 *W. c. 4.* and 1 *An. st. 1. c. 9.* that (besides the city of *London*) *York, Exeter, Bristol, Chester, Norwich,* and *Newcastle upon Tyne* shall be appointed for the assaying and marking of plate.

Assayers.

And the goldsmiths, silversmiths, and plateworkers in the said places, shall be incorporated into a company, and chuse wardens yearly. 12 & 13 *W. c. 4. f. 2.*

And an assayer shall be elected by the company in each of the said places, who shall be sworn by the mayor. *f. 4, 5.*

2. And every goldsmith, silversmith, and plateworker, within the said places, and elsewhere, shall before he takes upon him to exercise the said trade, enter his name, and mark, and place of abode, with the wardens of the company where an assayer is; and if he shall not make such entry, or shall strike any other mark but what is so entred, he shall forfeit double value, half to the king and half to him that shall sue in any court of record in the county or place where the offence shall be committed. 12 & 13 *W. c. 4. f. 7.*

Maker to be entred with the wardens of the company.

3. And

Assaying.

3. And every goldsmith, silversmith, and plateworker, inhabiting where there is not an assayer, shall first fix his mark, and then send it to an assayer; and if it be found by the assayer to be of the fineness of the standard, then he shall mark it, and have 6d. a pound for his trouble: And if any such person shall make any plate (less in fineness than the standard) or put any to sale (except what by reason of its smallness is not capable of the touch) before it shall be assayed and marked; he shall forfeit the same or the value thereof, half to the king and half to him that shall sue in any court of record in the county or place where the offence shall be committed. 12 & 13 W. c. 4. f. 9.

Fineness by the standard.

4. And as to the fineness thereof by the standard, it is enacted by the 6 G. c. 11. that plate may be made, either according to the old standard (of 11 ounces and 2 penny weights fine silver in every pound troy); or according to the new standard (of 11 ounces and 10 penny weights): but differently marked. f. 41.

Mark.

5. That is to say, plate of 11 ounces and 2 penny weights, shall be marked with the maker's mark, viz. the first letters of his christian and surname; the mark of the goldsmiths company in London, viz. the leopard's head, lion passant and a distinct variable mark to denote the year; (or, with the mark of the worker or maker, and with the mark appointed to be used by the assayers at York, Exeter, Bristol, Chester, Norwich, or Newcastle upon Tyne:)

And plate of 11 ounces and 10 penny weights shall be marked with the maker's mark, viz. the first letters of his christian and surname; and the mark of the said company, viz. a lion's head erased, the figure of a woman called *Britannia*, and the said mark or letter to denote the year; (or, with the mark of the worker or maker, and the mark of one of the said cities or towns.) 12 G. 2. c. 26. f. 5.

Licence of dealers in plate.

Licence.

1. No person, who shall trade in, vend, or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, shall by himself, or by any other employed by or for him, either publicly or privately,

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privately, trade in, vend, or sell any piece of plate or goods, or any ware in which the quantity of gold shall be of the weight of two ounces or upwards, or in which the quantity of silver shall be of the weight of 30 ounces or upwards; unless he shall have first paid a duty of 5*l.* for a licence to be taken out in manner following. 32 G. 2.

c. 24. *f.* 3.

2. That is to say, if it is within the limits of the chief office of excise in *London*, the same shall be granted under the hands and seals of two commissioners of excise; and the duty for the same shall be paid at the chief office of excise in *London*, or at any other place, and to such persons as the said commissioners shall appoint to deliver out such licences, and to receive the said duty: Elsewhere, to be granted under the hands and seals of the several collectors and supervisors of excise, within their respective districts; and the duty for the same shall be paid by the persons taking out such licences, at the office of excise next adjoining to the place where they respectively reside or inhabit, or any other place, and to such persons as the commissioners of excise shall appoint to deliver out such licences and to receive the said duty. 31 G. 2. c. 32.

f. 3.

3. And fresh licences shall be taken out yearly, ten days at least before the expiration of 12 kalendar months after taking out the former licence. *f.* 4.

4. And if any person shall presume or offer to trade in, vend or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, or any piece of plate or goods, or any ware in which the quantity of gold shall be of the weight of two ounces or upwards, or in which the quantity of silver shall be of the weight of 30 ounces or upwards as aforesaid, without first taking out such licence, and renewing the same yearly; he shall forfeit 20*l.* *f.* 4.

5. Provided that no person shall be liable to take out any licence for trading in, vending, or selling any quantity of gold not exceeding two penny weights, or of silver not exceeding five penny weights, in any one separate and distinct ware or piece of goods. 32 G. 2. c. 24.

f. 1.

6. All persons using the trade of selling gold or silver plate, or any goods or wares composed of gold or silver, or in which any gold or silver shall be manufactured; and also all persons employed to sell any gold or silver plate,

or

or any such goods or wares aforefaid, at any auction or publick fale; fhall refpectively be deemed traders in, fellers, or venders of gold or filver plate, and fhall take out a licence for the fame. 31 G. 2. c. 32. f. 6.

Pawnbrokers and
refiners.

7. No pawnbroker fhall by himfelf or by any other for his benefit (either publickly or privately) trade in or fell any gold or filver plate, or any goods or wares in which any gold or filver fhall be manufactured; and no perfon by himfelf or by any other for his benefit fhall ufe the trade of a refiner of gold or filver, without taking out and renewing yearly fuch licence as aforefaid. 32 G. 2. c. 24. f. 4.

And every fuch pawnbroker and refiner fhall be deemed to ufe the trade of felling or vending gold or filver plate. *id.*

And if any pawnbroker fhall trade in or fell any gold or filver plate, or any goods or wares in which any gold or filver fhall be manufactured, or fhall praftife the bufinefs of a refiner, without fuch licence, or fhall not have renewed the fame yearly, and made fuch payment as aforefaid; he fhall forfeit 20l. *id.*

Unto what places
the licence fhall
extend.

8. No licence fhall authorize any perfon to whom the fame may be granted, and who fhall fell fuch gold or filver plate in fhops, to trade in or fell fuch gold or filver plate in any other fhop or place, except in fuch houfes or places thereunto belonging, wherein he fhall inhabit and dwell at the time of granting fuch licence, or in booths or ftalls at fairs or markets. 31 G. 2. c. 32. f. 7.

Partners.

9. Perfons in partnership and carrying on their trade or bufinefs in one houfe, fhop, or tenement only; fhall not be obliged to take out more than one licence in one year. 31 G. 2. c. 32. f. 7.

Prosecution for
offences.

10. Profecutions for offences may be in the courts at *Westminfter*; or otherwife, if within the limits of the chief office of excife in *London*, the fame may be before three commissioners of excife, and in cafe of appeal before the commissioners of appeal; and elfewhere, before two juftices refiding near to the place where the offence was committed. 31 G. 2. c. 32. f. 11.

And the faid commissioners of excife, and commissioners for appeals (in cafe of appeal), and juftices refpectively, fhall upon complaint or information on oath fummone the party accufed; and upon his appearance or contempt, fhall proceed to the examination of the fact; and on due proof made thereof by confeffion, or oath of one witnefs, fhall give judgment; and iffue warrants under their hands for

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levying the penalties by distress (if not redeemed in 14 days); and for want of sufficient distress, shall imprison the offender till satisfaction be made. *id.*

And they may mitigate the said penalties of 20*l.* as by the laws of excise. 32 G. 2. c. 24. s. 8.

Persons aggrieved may appeal to the next sessions. 31 G. 2. c. 32. s. 11.

11. All forfeitures (the necessary charges for the recovery thereof being first deducted) shall be distributed, half to the king, and half to him who shall inform or sue. 31 G. 2. c. 32. s. 12. Disposal of the forfeitures.

Duty to be paid by the user.

1. By the 29 G. 2. c. 14. there shall be paid, by all persons and bodies politick or corporate, for all silver plate which they shall own, use, have, or keep, these several annual duties, *viz.* For 100 ounces troy weight, and not amounting to 200, 5*s.*; for 200, 10*s.*; and so 5*s.* more for every 100 ounces to the number of 4000, and for 4000 ounces and upwards shall be paid the sum of 10*l.* The same to be under the management of the commissioners of excise. s. 1, 2. Duty to be paid by the user.

But plate belonging to places of religious worship and only used there shall not be charged. s. 9.

Nor stock in trade of any goldsmith, silversmith, manufacturer, seller of or dealer in plate; but they shall pay for plate used in their families. s. 9, 10.

Also persons having plate pledged to, or deposited with them, shall not be charged, unless they also use the same: but the true owner shall be charged. s. 7, 8.

2. And all persons and bodies corporate, who on July 5, 1756, shall own, use, have, or keep any plate chargeable to these duties, within the limits of the chief office of excise in London, shall make entry thereof in writing at the said office within 30 days; and elsewhere, at the next excise office in 40 days: And all persons who shall after July 5, 1756, begin to own, use, have, or keep any such plate, shall make the like entry in 20 days: And at the time of such entry, shall pay the duties; for which the excise officers shall give a receipt. s. 3, 12. Entry and payment.

And the duties shall continue payable from July 5, annually; or from the time of beginning to keep such plate respectively. s. 3.

And within 30 days after the commencement of each year, fresh entry shall be made, and the duties paid. s. 4. But

Excise. (Plate)

But persons having made entry and payment, and afterwards acquiring other plate within the year, shall not enter nor pay for the same, till after the expiration of such year.

f. 5.

Persons neglecting to make entry as aforesaid, or concealing plate to avoid the duties, shall forfeit 20 l. f. 4.

But if they shall enter and pay before prosecution, altho' not strictly within the time, they shall be indemnified. f. 6.

And if any person having made entry and payment shall die within the year; he to whom the property shall come shall not be liable to pay for the residue of the year. f. 11.

Power of the
justices therein.

3. Prosecutions for the duties and for forfeitures and offences against this act shall be in the courts, at *Westminster*: or otherwise, the prosecutions for forfeitures and offences, if it is within the limits of the chief office of excise in *London*, shall be determined by three commissioners, and in case of appeal, by the commissioners of appeal; and elsewhere, by two justices residing near to the place where any forfeiture shall be incurred or offence committed; and the informer or defendant aggrieved may appeal to the next sessions, whose judgment shall be final. f. 13.

And on complaint or information on oath exhibited and brought before such commissioners or justices, they shall summon the party accused; and if it is a body politick shall summon the chief officer or officers thereof; and on appearance or contempt, shall proceed to the examination of the matter of fact; and on proof by confession, or oath of one witness, shall give judgment, and issue warrants for levying the forfeitures and penalties on the goods of such person or body politick, and cause sale to be made thereof if not redeemed in 14 days; and for want of sufficient distress, otherwise than in the case of a body politick, shall imprison the offender till satisfaction be made. f. 13.

Which said forfeitures and penalties (necessary charges for the recovery thereof being first deducted) shall be half to the king, and half to him who shall inform or sue. f. 14.

Exportation.

So much wrought plate shall be exported yearly, as shall be allowed by the commissioners of the customs or three of them. 9 & 10 W. c. 28. f. 1.

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But no drawback shall be allowed on the exportation of silver plate. 31 G. 2. c. 32. f. 9.

For other regulations concerning plate, not relating to any of these duties, the reader may consult the statutes at large mentioned under this head: And especially the 12 G. 2. c. 26.

XII. Salt.

1. The duties upon salt shall be under the management of the commissioners of excise. 5 W. c. 7. f. 5.

Officers of the salt duties.

Or particular commissioners may be appointed; in which case they shall have the same power as commissioners of the excise. 1 An. st. 1. c. 21. f. 26.

And all collectors and other officers for ascertaining, collecting, or receiving the duty, shall be appointed under the hands and seals of the said commissioners. 5 W. c. 7. f. 5.

And no person shall act as chief commissioner until he shall before a baron of the exchequer take the oaths of allegiance and supremacy, and the oath following:

You shall swear to execute your office, truly and faithfully without favour or affection, and shall from time to time true account make and deliver to such person and persons as his majesty shall appoint to receive the same; and shall take no fee or reward for the execution of the said office, from any other person than from his majesty, or those whom his majesty shall appoint on that behalf: So help you God. 5 W. c. 7. f. 14.

And no person shall be capable of any office relating to the said duties (other than that of chief commissioner), until he shall before two commissioners, or two justices of the peace where he shall be appointed officer, take the said oaths of allegiance and supremacy, and the said last mentioned oath *mutatis mutandis*. 5 W. c. 7. f. 15.

2. By the 2 & 3 An. c. 14. No salt of the produce of Great Britain shall be imported or landed in England; on pain that the same shall be forfeited, and also the ship and tackle; and every person assisting therein shall forfeit 20l. or be imprisoned six months. f. 1. (And by the 5 G. c. 18. f. 23. this is extended to salt shipped for exportation, and put on shore again, or taken out of the vessel.)

British salt imported.

And the salt officers may at any time within two months, seize the salt, ship and tackle; and if the owner shall not in 20 days claim the same, and give security to answer the value, they shall be sold. f. 2.

Excise. (Salt.)

But this shall not extend to salt shipped to be carried coastwise by certificate. *f. 3.*

Also, where salt entred for exportation, shall be forced into any port by weather, enemies, or other necessity, the owner or master may within 20 days reland the salt, so as entry be made, and the drawback repaid. *f. 4.*

Also, where a ship shall come in from *Ireland*, or any other foreign part, having any salt on board, which was taken in only for provision of the ship; the master may land the same, so as entry be made in ten days, and the duty paid or secured as for foreign salt imported. *id. 6.* But if he shall not enter and pay, or secure the duty in ten days, and before it be landed, the same shall be forfeited; and the master, owner, or importer, shall forfeit double value. *5 G. c. 18. f. 18.*

Foreign salt
imported.

3. By the *5 W. c. 7.* There shall be paid for every gallon of foreign salt imported, 3d. over and above other duties. *f. 3.*

And by the *9 & 10 W. c. 44.* an additional duty is laid, of 7d. a gallon. *f. 3.* The same amounting in the whole to 6s. 8d. a bushel. *8 G. c. 4.*

The gallon to be rated after eight gallons to the bushel *Winchester* measure. *5 W. c. 7. f. 18.*

And 84lb. weight of foreign salt shall be deemed a bushel. *1 An. st. 1. c. 21. f. 6.*

Which said duties shall be paid by the importer, on entry, and before landing; yet, on giving security to the collector, he shall have six months time for payment: But if he pay ready money, he shall have after the rate of 10l. *per centum per annum* abated. *9 & 10 W. c. 44. f. 6.*

And by the *5 An. c. 29.* If the salt imported amounts in the whole to more than 40 bushels, a further time is allowed for payment of the duties: in order to which, the salt shall on landing be weighed, cellared, and locked up in the presence of a salt officer, under the custody of the merchant or importer (who is to be at the charge of the cellarage or storehouse); and the merchant or importer may in presence of a salt officer, and by warrant or permit under his hand and seal, have what quantity thereof his occasions may require, not under 40 bushels at a time; giving security for the duty of what quantity he receives, payable in six months; and if he shall pay ready money, he shall have after the rate of 10l. *per centum per annum* abated. *f. 1, 3.*

But if such foreign salt imported, shall not on landing be secured as aforesaid, it shall be liable to payment of duties, and to such penalties for not paying or securing the same, as if this act had not been made; and no salt so cellared and locked up shall be removed without notice first given to the officer, and without a warrant or permit for conveying it; on pain of forfeiting such salt, and 10s. a bushel, and also 20l. to be recovered of the importer; and the carrier or person removing it, shall be also liable to the penalty of 10s. a bushel, and 20 l. for every offence.

f. 2.

And no foreign salt shall be imported in any ship or vessel of less burthen than 40 tuns, and in bulk only (except for the necessary provisions of the ships); on pain of forfeiting the salt and double value thereof, to be recovered of the importer. 3 G. 2. c. 20. f. 18.

4. And if any salt be landed before entry made with the salt officer, or before the duty paid, or without a warrant for landing the same signed by the salt officer; it shall be forfeited, or the value, and also 10s. a bushel. 9 & 10 W. c. 44. f. 6. And moreover every person assisting therein, shall forfeit 100 l. 5 G. c. 18. f. 24.

Landing salt before payment of the duty.

5. And any officer of the salt duties, or customs may go on board any vessel, to search if there be any salt on board, and may seize the same if it be found in any other vessel than that wherein it was brought into port, unless it had been entred, or the duty paid; and all such salt shall be forfeited, or the value thereof, to be recovered of the master or owner of the vessel, who shall also be liable to all other penalties as if the same had been landed without entry or payment of duties: and every person obstructing such officer, shall forfeit 40 l. 5 G. c. 18. f. 22.

Search on ship-board.

6. And where any vessel, laden with salt, shall be found hovering on the coasts, the officers of the customs or salt duties may go on board and compel them to come into port, and may continue on board, till the salt shall be unladed, or the ship depart on her voyage: And if the persons on board such ship, or any other vessel importing salt, shall neglect or refuse to enter, or to unlade such salt, for 20 days after it is come into port, or within that time to depart on their voyage, unless permitted by the chief officer of the customs to stay longer; in such case all the salt on board shall be forfeited, and double value thereof, to be recovered of the master or commander of the vessel.

Ships hovering near the coast.

1 An. st. 1. c. 21. f. 7.

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7. By

But

Excise. (Salt.)

Duty on home
salt.

7. By the 5 *W. c.* 7. a duty is laid on home salt of 1½ d. a gallon. *f.* 3.

Which by the 7 & 8 *W. c.* 31. is explained to extend to all salt made from rock salt, salt refined, or salt made from salt. *f.* 43.

And by the 9 & 10 *W. c.* 44. a further duty is imposed on all such salt, of 3½ d. a gallon. *f.* 5. The same amounting in the whole to 3 s. 4 d. a bushel.

Note; By the 3 *G. 2. c.* 20. These duties were repealed, but were revived by the 5 *G. 2. c.* 6. for three years, and so from time to time continued, and at last by the 26 *G. 2. c.* 3. made perpetual.

And by the 9 *An. c.* 23. a further duty of 9 s. a ton, is laid on all rock salt exported to *Ireland.* *f.* 44.

And rock salt shall be ascertained as to payment of the duties, at 65 pounds weight to the bushel. 1 *An. st.* 1. *c.* 21. *f.* 9.

All other salt at 56 pounds to the bushel. 9 & 10 *W. c.* 44. *f.* 34.

But by the 8 *G. 3. c.* 25. foul salt, called by the several names of grey or scrow salt, salt scale, sand scale, or crustings, being produced in the manufacturing of white salt, and not fit to be applied to the curing of provisions, but which may be beneficial in agriculture, shall be charged only with a duty of 4 d. a bushel. And if any person, after it has been removed from the works, shall use the same otherwise than for the manuring of land he shall forfeit 60 l. one third to the king, and two thirds to the informer, to be levied in like manner, and with like power of mitigation, as by the laws of excise, or in the courts at *Westminster.*

Drawback on
rock salt refined.

8. Where any rock salt for which the duties shall have been paid or secured, shall be melted and refined; the person who shall refine it into white salt, shall have an abatement out of the duty of the said white salt, of so much as was charged on the said rock so melted and refined; so as the rock so refined were before the melting thereof weighed in the presence of the officer; and so as oath be first made before a justice near adjoining, of the particular quantity of rock salt by such refiner employed in making the said white salt, and that he or any other person by his privity did not increase the said rock salt by mixing or other undue practice, and that no former allowance for the said rock salt had been made to his use; and so as due proof be made upon oath or otherwise, that the duties for the said

rock salt so refined were paid or secured. 10 & 11 W. c. 22. f. 6.

And no rock salt shall be refined or made into white salt in any place except within ten miles of the pit, or at such places as were used for refining rock salt before May 10, 1702. on pain of 40s. a bushel. 1 An. st. 1. c. 21. f. 10.

9. Every maker of salt, refiner of rock salt, and proprietor of any salt works or pits, who shall set up or use any salt work, salt pit, salt pan, storehouse, warehouse, or other place, for the making, laying, refining, or keeping of salt, or rock salt, without giving notice thereof at the next salt office; shall forfeit 40l. 1 An. st. 1. c. 21. f. 1.

10. And if any salt maker, importer of salt, or refiner or proprietor of rock salt, shall on request or demand made, in the day time, or in the night in presence of a constable, refuse to permit the officer to enter and come into his works, warehouse, storehouse, or other place for making, laying, refining, or keeping of salt; he shall forfeit 40l. 1 An. st. 1. c. 21. f. 2.

11. And, generally, if any person shall obstruct any officer in the execution of his office, or of the powers given him by any law relating to the salt duties; he shall forfeit 20l. and for nonpayment, and in default of distress, he may be committed to the house of correction, to be whipt and kept to hard labour for any time not exceeding one month. 1 An. st. 1. c. 21. f. 4.

12. No salt shall be delivered from any salt works or pits, without notice first given to the officer; on pain of forfeiture of the salt so delivered, and of 20l. by the owner of the works or pits. 5 W. c. 7. f. 19.

And by the 9 & 10 W. c. 44. No salt shall be delivered from any salt works or pits, without notice given to the officer; on pain of the owner forfeiting the same, and 10s. a bushel. f. 26.

And if any officer shall deliver, or be consenting or privy to the delivering, removing, or conveying, British white salt, refined salt, rock salt, or salt rock, from any salt work, crib, storehouse, warehouse, or other place made use of for making, refining, or keeping of any such salt; or from any salt pit; or to the landing any foreign salt out of any vessel importing the same from beyond the seas; before the same be duly entred and charged in the book kept for that purpose; he shall forfeit, over and above the penalty of his bond entred into for the due performance of

Excise. (Salt.)

the trust reposed in him, double the value of such salt, and also 10s. a bushel. 5 G. 3. c. 43. f. 40.

Scales and weights.

13. The collector shall provide at every salt work or pit, a sufficient beam, scales, and weights, or stilyard, and shall have liberty to fix the same, for weighing the salt that shall be delivered from thence; and one or more persons living near, shall be admitted and sworn to the true weighing of such salt, before one justice near adjoining, without fee; and he shall be paid by the collector or officer for the duties. 7 & 8 W. c. 31. f. 46.

Weighing.

14. Every owner of any rock pit, who shall take any rock salt out of such pit, shall before the removal thereof, cause the same to be weighed in the presence of the salt officer, who shall attend at all reasonable hours in the day time to see it weighed, and take an account and make return thereof in writing under his hand to the commissioners of excise, or whom they shall appoint, leaving a true copy under his hand with the proprietor: and if the proprietor refuse to weigh it in presence of the officer when taken out of the pit, or suffer any rock salt to be removed from the pit before it hath been weighed; he shall forfeit 20l. and double value. 10 & 11 W. c. 22. f. 3.

Entry of salt made.

15. All makers and proprietors of salt shall make entries with the salt officers of the quantity by them made and delivered, or imported; and shall have a warrant under the hand and seal of an officer, empowering them to carry away the same, before it shall be removed, which warrant the officer shall give on paying or securing the duties (in nine months, 5 An. c. 29. f. 5.) But if any person at the time of entry shall pay ready money, he shall have after the rate of ten *per centum per annum* allowed. 5 W. c. 7. f. 6.

Payment of the duties.

16. And the proprietor of rock pits shall clear off the duties of all rock salt, in two days after the charge made by the officer, or within the said two days give security to pay the same (in twelve months, 5 An. c. 29. f. 5.); on pain of double value of the duties: But if he shall pay within the two days, he shall be allowed after the rate of 10l. *per centum per annum*, for the said twelve months. 10 & 11 W. c. 22. f. 4, 5.

Discount on payment.

17. And persons giving security for payment of the duties, may at any time within 28 days after giving the same, pay the duty, and shall have a discount after 10l. *per centum per annum* for the remainder of the time. 1 An. f. 1. c. 21. f. 29.

18. But *

18. But the owners of rock salt, may remove it out of the pits, or warehouses adjoining or belonging to such pits, into their other warehouses or places for storing thereof, for convenience of selling or shipping after entry made, and a warrant taken for the same from the next officer; and shall not be obliged to pay or secure the duty on such removal. 5 *W. c. 7. f. 22.* How far rock salt may be removed, with the duty unpaid.

19. The officers may seize all salt carried before entry, without a permit, and the same shall be brought to the next office; and if it shall not be claimed by the owner or one deputed under his hand, in ten days, it shall be forfeited and sold the next general day of sale: And if it be claimed in ten days, and the claimer doth not make it appear by the oath of one witness that it had been duly entred, and a warrant obtained for removing it, it shall likewise be forfeited: And every person who shall carry or cause it to be carried before such entry and warrant, shall forfeit double the value. 5 *W. c. 7. f. 7.* And also 10 s. a bushel. 9 & 10 *W. c. 44. f. 12.* Salt carried without a permit.

And by the 1 *An. st. 1. c. 21.* If any salt carrier, or other person, shall remove any salt from any salt works, or place thereunto belonging, without entry and payment of the duties or securing the same, or without a permit; the officers may not only seize the salt, but also apprehend the offender, and if he shall not on conviction pay the penalties, and no sufficient distress can be found, he may be committed to the house of correction to be whipt and kept to hard labour for any time not exceeding one month. *f. 4.*

And by the 2 & 3 *An. c. 14.* The carrier who shall carry any salt without a permit, shall forfeit 20 l. *f. 8.*

20. And every person in whose possession any salt shall be found, near the salt works or sea coasts which hath not been entred, and the duty paid or secured; shall if it be foreign salt, be liable to such penalties, as if he had landed the same without entry or payment of duties; and if it be *English* salt, he shall be liable to such penalties, as if he had removed it from the salt works without entry or payment of duties, and without a permit; unless he shall make it appear, that he bought it of a maker, retailer, or importer of salt, and of whom. 1 *An. st. 1. c. 21. f. 3.* Salt found unentred.

21. The salt officer shall deliver *gratis* and without delay, so many several permits to each carrier of salt, as he shall demand for such several horse loads of salt as he shall load Several permits to be delivered with several parcels.

load at one time, and at one salt work. 7 & 8 W. c. 31. f. 47.

Officer may demand sight of the permit.

22. The officer, where he shall meet with any person carrying salt, by day or night, by land or water, may demand a sight of the permit; and if he shall suspect that there is more salt than is expressed in the permit, he may at his own expence re-weigh the same; and if the salt on re-weighing shall be found to be more in weight than is contained in the permit, the surpluſage shall be forfeited; and the person or persons concerned in carrying the same, shall be liable to the penalties and forfeitures as persons carrying salt without payment of the duties. 5 G. 3. c. 43. f. 42.

Prices of salt.

23. The lord mayor and aldermen in London, and the justices of the peace in the county at their general sessions, may set and publish in writing the prices of salt, and alter the same as there shall be occasion: and persons refusing to sell at such price, or selling at a higher price, shall forfeit 5l. half to the king, and half to the informer, by distress, by warrant of the lord mayor or any such justice; and in default of sufficient distress, to be imprisoned till paid. 7 & 8 W. c. 31. f. 92.

Salt to be sold by weight.

24. By the 9 & 10 W. c. 6. No person dealing in salt, shall sell it otherwise than by weight, after the rate of 56 pounds to the bushel; on pain of 5l. to the informer; to be determined by two justices residing near: And the party grieved may appeal to the next sessions. And the said justices shall on complaint summon the party accused, and on appearance or contempt examine the matter, and on proof by the oath of two witnesses, or confession, give judgment, and shall issue their warrant to levy the same by distress, and cause sale thereof to be made, if not redeemed in six days, rendering the overplus, and for want of sufficient distress, shall imprison the offender till satisfaction is made.

And no person shall buy salt otherwise than by weight, and not by measure; on pain of 10s. a bushel, and so proportionably. 1 An. st. 1. c. 21. f. 28.

Carrying coast-wise.

25. No retailer or shopkeeper shall ship any salt to be sent to any port within the kingdom, before he hath made it appear by oath or otherwise, before the commissioners or a salt officer, that the duty is paid or secured, or that it was bought of some other retailer or shopkeeper that hath paid the duty. 5 W. c. 7. f. 8.

And all salt to be put on shipboard, shall be weighed at the place where taken on board; and none shall be carried

on

on board before it is weighed, and a permit containing the quantity is obtained ; on pain of forfeiture, and 10s. a bushel : But if the officer shall not attend to weigh it, or refuse to give a permit, it may be carried on board without incurring any penalty. 10 & 11 W. c. 22. f. 10, 11.

And where any salt shall be laid on shipboard, the officer of the customs where it shall be laden, shall in the cocquet (which cocquet shall be also signed by the salt officer) express the quantity : And if such ship shall come into any port, the officers of the customs or of the salt duties, may go on board and demand a sight of the cocquet, and if any such officer shall have just cause to suspect, that there is not so much salt on board as the quantity expressed in the cocquet, and shall make affidavit thereof, before the collector or customhouse of the port, or person executing either of their offices ; he may weigh all the salt on board ; and if there shall not be so much as the cocquet expresseth (making allowance for waste) the salt remaining shall be forfeited. 1 An. st. 1. c. 21. f. 13.

And persons shipping salt to be carried coastwise, the duties for which have been paid or secured, shall have an allowance for waste after the rate of three bushels for every 40 bushels of white salt, and after the rate of a bushel and an half for every 40 bushels of rock salt ; which allowance shall be made but once for the same salt, altho' it be carried from several ports coastwise. 5 An. c. 29. f. 4. 6 An. c. 12. f. 6.

And every commander of any vessel that shall carry salt from one port to another within the kingdom, shall (before he hath a warrant for landing it) deliver to the salt officers in the port of landing, a true particular of the quantity, signed by the salt and customhouse officers of the port from whence he came ; and then the master, mate, or boatswain, shall make oath before some of the commissioners or their officers, that to his knowledge there hath not been laid on board any salt since he came from such port. And if the vessel be to deliver one part of the salt at one port, and another part at another port, then the officers for the salt and customs, where part of the salt shall be delivered, shall certify on the back of the warrant, or by certificate alone, under their hands and seals, how much of the salt hath been there landed, on pain of forfeiting double the value of the salt that shall be otherwise delivered. 5 W. c. 7. f. 9. And likewise 10s. a bushel. 9 & 10 W. c. 44. f. 12.

And

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And the officer at the unlading port may go on board the ship, and demand a sight of the permit, and weigh the salt upon unlading; and if it be more in weight than is contained in the permit, the surplufage shall be forfeited. And if the master of the ship shall refuse to shew the permit, the officer may seize and detain the salt till it be produced. And if he do not produce it in four days after seizure, the salt shall be forfeited. 10 & 11 W. c. 22. f. 12, 13.

On reshipping any salt from any boat, barge or other vessel, and before any dispatches be granted for the salt so reshipped, the master, mate, or chief boatman, shall make oath before the salt officer, that all the salt taken in at the place of lading is reshipped on board such vessel, and that no salt hath been added to it or taken from it, to be best of his knowledge and belief; on pain of forfeiting double the value of the salt that shall be otherwise reshipped, and likewise 10s. a bushel. 5 G. c. 18. f. 25.

And where any subject hath shipped salt that hath paid duty, in order to be conveyed to some part of *England*, and any of it is lost at sea (or in any port, harbour, or river, 8 Geo. c. 4. f. 11.) by storm, or being thrown overboard for preserving mens lives or the vessel (or by sinking of the ship, or be taken by enemies, 9 & 10 W. c. 44. 2 & 3 An. c. 14.) ; in such case, the merchant or owner of the salt shall, on proof made by the oaths of two witnesses, whereof the master or mate shall be one, at the quarter sessions where he shall inhabit, of the loss of such salt, and that the same was not occasioned by any leakage of the ship, or any negligence or default of the master or mariners, receive from the said sessions a certificate that such proof was made before them; and on producing the certificate to the salt officer he shall let him buy the like quantity duty free. 2 & 3 An. c. 14. f. 18. Which certificate shall also vacate the security given for payment of the duties. 26 G. 2. c. 32. f. 6.

Exportation.

26. When any salt shall be entred to be put on board, and the duty paid or secured; the officer shall, on due notice, by himself, or deputy, between sun rising and setting, attend the weighing it out, without loss of time; on pain of 40s. 9 & 10 W. c. 6. f. 3.

And the salt officers may go aboard all ships exporting salt, and continue, and take an account thereof; and if any person shall obstruct any such officer, he shall forfeit 20l. 1 An. st. 1. c. 21. f. 15.

And

And there shall be a drawback of the duties on salt exported. 5 *W. c. 7. f. 11.* 10 & 11 *W. c. 22. f. 7.* 5 *An. c. 29. f. 16.*

Moreover there shall be an allowance of four bushels for every 40 bushels of white salt, and of two for every 40 bushels of rock salt, exported to *Ireland*; for the waste in carriage. 5 *An. c. 29. f. 14.*

And if any salt, for which the duty hath been repaid on exportation, shall be landed again before the duty be again paid and entry made, and other things performed, as in case of foreign salt imported; the offender shall forfeit double value, and 10 s. a bushel, and the other penalties for foreign salt landed unentred. 9 & 10 *W. c. 44. f. 27.* 5 *W. c. 7. f. 20.*

And if any ship laden with salt exported, shall by stress of weather or otherwise be drove into any port, the salt officer may come on board, and continue till the ship shall unlade her cargo, or return to sea; on pain of 20 l. to be recovered of the master who shall refuse the officer to come or continue on board. And if any part of the salt shall be put on shore, without entry or repayment of the duty; the said salt, and also the whole cargo of salt in the ship, shall be forfeited. 1 *An. st. 1. c. 21. f. 12.*

And where any salt, for which the duties shall have been paid or secured, shall be shipped in order to be exported, and the same shall perish by sinking of the ship in the port, before the exporter shall be intitled to a drawback; the exporter or proprietor shall on proof made at the next sessions, to be held next to the place where it shall so perish, of the loss of such salt, receive from the said sessions a certificate, that such proof was made before them; and on producing the certificate to the collector of the salt duties, he shall let such person buy the like quantity duty free. 2 & 3 *An. c. 14. f. 10.*

And where any salt shall be shipped in order for exportation to *Ireland*, and it shall perish by sinking of the ship, or be taken by enemies; the exporter or proprietor shall, on proof made at the quarter sessions for the place from whence it was exported, of the loss of such salt, receive from the said sessions a certificate, that such proof was made before them; and on producing the certificate to the officer of the place where the duty hath been paid or secured, the security shall be discharged, and the money repaid. 4 *An. c. 12. f. 11.* 9 *An. c. 23. f. 46.* Proof to be made in two years. 26 *G. 2. c. 32. f. 7.*

27. The curers of fish for exportation may import foreign salt or take from the pit or work *British* salt (or rock salt for curing of fish.)

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rock salt refined, 8 G. c. 16. f. 6.) for curing fish for exportation, without duty, except the customs on importation; such foreign salt being landed, and such *British* salt being taken from the pits or works, and weighed, in the presence of an officer, and being lodged in a warehouse, under a lock both of the officer and proprietor; which shall remain there during the several intervals of the fishing season. 5 G. c. 18. f. 1.

And any person who shall imbezil any foreign salt after importation, and before cellaring, shall forfeit 20 s. a bushel; and any person who shall imbezil any *British* salt, after weighing at the pits or works, and before cellaring, shall forfeit 10 s. a bushel. 5 G. c. 18. f. 4.

The proprietor shall enter at the next office the quantity so by him lodged; and the officer shall keep an account of the quantity in his custody. 5 G. c. 18. f. 1.

And at the beginning of the fishing season, the proprietor or his agent shall make oath in writing before an officer at the next office, declaring the quantity so lodged, and that it is all intended for curing of fish for exportation only, and shall not by his consent be delivered but for the said purpose; after which oath so made and filed, the officer in whose custody the salt hath continued during the interval of the fishing season, shall deliver all the said salt into the sole custody of the proprietor. 5 G. c. 18. f. 1.

And in the case of herrings to be cured for exportation it is enacted by the 8 G. c. 4. and 8 G. c. 16. that the proprietor of such salt delivered duty free, or his agent, shall instead of the said oath, make oath in writing at the next salt office, declaring the quantity of the foreign or *British* salt respectively lodged for curing of fish, and that it is intended for the curing of fish for exportation only, and shall not by his consent be delivered but for that purpose, except so much thereof as shall be used for curing such red or white herrings as shall be entred for home consumption, and charged with the duties by the said acts respectively chargeable thereupon.

And no foreign salt shall be delivered over from the joint custody of the officer and proprietor, into the sole custody of the proprietor or his agent, for curing fish for exportation; except he give security to the satisfaction of the chief officer of the salt duty in the port, that he will account for the foreign salt so by him received, or answer the penalties. 8 G. 2. c. 12. f. 3.

And for every bushel of salt so lodged, which shall be either carried away, or found wanting at the redelivering thereof into the sole custody of the proprietor, reasonable allowance for waste being first made; the proprietor shall forfeit 20 s. 5 G. c. 18. f. 3.

And at the end of every fishing season, the officer shall take an account of the quantity remaining in hand, which shall be locked up as aforesaid; and the proprietor shall (within three months after the expiration of each year, 8 G. c. 4. f. 10.) deliver an account in writing into the office, containing the quantity of fish exported or entred for exportation, on which the salt hath been used; together with a certificate from the officer where it is shipped for exportation, verifying the account; which account shall be also affirmed by the oath of the proprietor or his agent, and remain in the office; and if any of the salt shall be delivered over to any other person, and used by him in curing of fish, that also shall be expressed in the account, and such person shall in like manner make another account of all the salt used by him: And if any such person shall neglect or refuse to deliver such account within the said time; he shall forfeit 40 l. 5 G. c. 18. f. 1.

And if the proprietor of such salt so delivered over, shall not make it appear by oath or otherwise to the proper officer, that such salt so delivered over was used for curing of fish; he shall be deemed guilty of imbeziling it, and forfeit 50 l. 11 G. c. 30. f. 41.

Also the said account shall express the quantity of red or white herrings entred for home consumption, on which such salt hath been used. 8 G. c. 4. f. 3. 8 G. c. 16. f. 3.

And for every bushel of salt, so taken out of the cellar or salt works, which shall not be so accounted for by such oath and certificate; or by certificate from the quarter sessions, that proof was there made, that such salt was put on board for curing fish at sea, and was there taken by enemies, or otherwise lost at sea; or shall not be returned into, or found remaining in the cellar or warehouse; the owner or other person standing accountable for the same, shall forfeit 20 s. And the proprietor or his agent selling, giving away, using or delivering any such salt otherwise than for the purposes aforesaid; shall forfeit 20 s. a bushel: And every person buying or receiving the same, shall forfeit also 20 s. a bushel: And in default of payment in 14 days after conviction, and where no sufficient effects can

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can be found to answer the same, he shall be sent to the house of correction, to be whipped and kept to hard labour, not exceeding three months. 5 G. c. 18. f. 2.

For every cask of pilchards or scads exported, containing 50 gallons, shall be paid by the salt officer an allowance of 7 s; for every hundred of cod fish, ling or hake (except dried ones called haberdines) of 14 inches long, from the bone in the fin to the third joint in the tail, 5 s; for every barrel of wet cod fish, ling, or hake, of 32 gallons, 2 s; for every hundred weight of haberdines 3 s; for every barrel of salmon of 42 gallons 4 s. 6 d; for every barrel of white herrings of 32 gallons 2 s. 8 d; for every barrel of full red herrings of 32 gallons 1 s. 9 d; for every barrel of clean shotten herrings of 32 gallons 1 s; for every last of dried red sprats 1 s. And the officers shall cut off part of the tail of the codfish, ling and hake; and mark the casks of the other fish, that it may be known that they have once had the allowance. 5 G. c. 18. f. 6.

And the maker or curer of red herrings, before he remove them (except for exportation) from the place of curing, shall make entry thereof at the next salt office, and pay 1 s. 8 d. a thousand. And if they be packed up in casks, the number shall be marked on the head; and a permit shall be given by the salt officer, expressing the number, and the mark and number of the casks, and for what place they are intended, and whether to be sent by land or water; on pain of forfeiting all the red herrings removed otherwise, and also 40 s. a thousand. 8 G. c. 4. f. 2. And as the duties on salt shall rise or fall, the 1 s. 8 d. a thousand shall rise and fall proportionably. f. 5.

And the maker or curer of white herrings, before he remove them (except for exportation) from the place of curing, shall make entry thereof at the next salt office, and pay 3 s. 4 d. a barrel; and the cask shall be marked on the head, shewing the contents: then a permit shall be given by the salt officer, expressing the quantity, and mark and number of the casks, and for what place they are intended, and whether to be sent by land or water, on pain of forfeiting all the white herrings removed otherwise, with the casks, and also 40 s. a cask. 8 G. c. 16. f. 2.

And the officers at all times in the day, or in the night in presence of a constable, may enter into the cellars and warehouses, and inspect the curing of the fish, and gage the salt, and mark the casks, and see them exported; and if any person shall obstruct them, he shall forfeit 20 l. 5 G. c. 18. f. 7.

No

Excise. (Salt.)

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No herrings, pilchards, scads, codfish, ling, hake, salmon, or dried red sprats, shall after they be put on board any boat or vessel, in order to be exported, be taken out thereof, otherwise than to put the fish into the ships in which they are to be exported, nor put on shore but in the presence of a salt officer; on pain that the same shall be forfeited, and also the ship and tackle; and every person assisting therein, shall forfeit 20 l. or be imprisoned six months. 5 G. c. 18. s. 23. 2 & 3 An. c. 14. s. 13.

If the said fish shall not be exported, for want of an opportunity, while they are good and merchantable; the owner may cause them to be destroyed in the presence of an officer; and the officer's certificate that they were destroyed, shall be admitted to verify the account. 8 G. c. 4. s. 4.

No person shall cure or pack pilchards, for sale, unless he be owner or part owner of a seyn or drift net, or have the consent of such owner in writing, and that on each cask or hogshhead the word *seyn* or *drift* shall be burnt with an iron, together with the name and surname of the owner, and the number of pilchards; on pain of double value. 1 An. s. 1. c. 21. s. 31.

28. For every barrel of salted beef or pork exported for sale, there shall be allowed 5 s. a barrel, to be paid by the salt officer in 30 days after demand, on a debenture to be prepared by the collector of the customs, and verified by the searcher as to the quantity, and that it is good and merchantable: and the oath of the exporter or agent shall be first taken before the principal officers of the port, that it was salted with salt for which the duties have been paid and not drawn back, and that it is really exported for sale, and that no part thereof was spent nor intended to be spent for the ship's use, and not intended to be relanded; and the salt officers, on exportation of beef or pork, may mark the barrel or vessel, that it may be known to have been exported. 5 An. c. 29. s. 8.

Salt for curing of
beef and pork.

And if any such beef or pork shall be relanded, it shall be forfeited, and also 40 s. a barrel; to be recovered of the importer or proprietor. s. 9.

29. No person shall use any brine before it is boiled into salt, or any rock salt before it is refined into white salt for pickling or curing of flesh or fish, or preserving any provisions; on pain of 40 s. for every gallon of brine, or pound of rock salt. 1 An. s. 1. c. 21. s. 5.

Using brine or
rock salt for cu-
ring of flesh or
fish.

And

And every person who shall carry any brine from the salt pits (other than the known proprietors of pans for boiling it into white salt) shall likewise forfeit 40s. a gallon. 5 G. c. 18. f. 17.

Salt re-landed
from boats or
other vessels.

30. Where salt shall be shipped on board any boat, barge, or other vessel, in order to be carried down any river, or to be carried coastwise, for the purposes of the fishery, or to be reshipped for exportation, or otherwise, and the same or any part thereof shall be landed without the presence of an officer; all such salt so landed shall be forfeited, and also 10s. a bushel; to be recovered of the owner of the vessel; and also the vessel shall be forfeited, together with the furniture; and every person that shall take any salt out of such vessel, or carry the same on shore, or convey the same from the shore when landed, or shall be assisting therein, shall forfeit 20l. 5 G. 3. c. 43. f. 41.

Power of the
justices.

31. All penalties and forfeitures given by any act relating to the duties upon salt (except where it is herein otherwise directed) shall be employed, half to the use of the king, and half to him who shall seize or inform, to be recovered in such manner, and with such power of mitigation, as any forfeiture may be by any law of excise; or in the courts at *Westminster*. And every such officer may seize all salt and other things, which by any law relating to the duties on salt are declared to be forfeited. 5 G. c. 18. f. 26. 24 G. 2. c. 40. f. 33.

And by the 5 G. 3. c. 43. In all cases, where [salt or fish of any kind shall be liable to seizure, by virtue of this or any former act; the bags, sacks, casks, or other package, and also the carriages, horses, and other cattle, made use of in carrying the same, shall be forfeited, and may be seized accordingly. f. 45.

Appeal.

32. And if any person is aggrieved by any order of two justices relating to the duties upon salt, or to any forfeiture or offence concerning the same; he may appeal to the next quarter sessions. 10 & 11 W. c. 22. f. 9.

Dealer in salt not
to act as a justice.

33. But no dealer in salt shall act as a justice of the peace in any matter relating to the duties upon salt; and if there shall not be a sufficient number of justices in any corporation, not dealers in salt, the justices of the county shall have power to act therein. 1 An. f. 1. c. 21. f. 18.

Proof to lie on
the claimer, and
not on the officer.

34. If any salt, as well British as foreign rock salt, or salt refined from rock salt, or red or white herrings, or any other sort of fish, be seized for non-payment of duties,

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duties, or any other cause of forfeiture, by any of the laws relating to the duties on salt or fish now in force; and any dispute shall arise, whether the same had been duly entered, and the duties paid or secured; or that such salt or fish had been legally condemned; or that the salt had been duly entred and locked up for the fishery; or that the quantity of salt used in the curing of fish, as set forth in the curer's account, was used: the proof shall lie on the owner or claimer of such salt or herrings, or the curer of fish, and not on the officer. 5 G. 3. c. 43. f. 44.

XIII. Soap.

1. By the 10 An. c. 19. and 12 An. f. 2. c. 9. There shall be paid for all soap imported (over and above former duties) 3d. a pound; which shall be under the management of the commissioners of the customs. Duty on soap imported.

2. And by the said acts, there shall be paid for all soap made within the kingdom, 1d. a pound. Duty on soap made in the kingdom.

3. And the commissioners of the treasury shall appoint commissioners for the duty on soap made in the kingdom; who shall substitute inferior officers. 10 An. c. 19. f. 5. Officers for the duties on soap.

4. And no maker of soap shall set up, alter, or use any boiling house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of soap, or for the boiling or keeping any oil, tallow, pot-ash, lime, or other materials proper to be made into soap; or use any copper, kettle, furnace, fat, cistern, trough, or other vessel for the boiling or making of soap, without first giving notice thereof in writing, at the next office for the said duties; on pain of 50l. 10 An. c. 19. f. 6. Place of making to be entred.

And all soap, oil, tallow, and other materials, which shall be found in any private boiling house, workhouse, warehouse, or other place, and all private coppers, kettles, furnaces, troughs, and other vessels, for which no entry shall be made, or notice given, shall be forfeited, and the value thereof. 10 An. c. 19. f. 19.

And by the 5 G. 3. c. 43. Whereas offenders frequently withdraw themselves to avoid the aforesaid penalty; it is enacted, that a summons left at the place where discovery shall be made of such offence, directed to the person prosecuted by his right or assumed name, shall be as effective.

Covers and locks
to be provided.

tual as if delivered personally, and directed to him by his proper name. *f. 19.*

5. And every person who shall make any *hard* soap, shall at his own expence provide sufficient wooden covers (to be approved of in writing by the surveyor or supervisor) to every copper, pan, or other utensil, wherein he shall boil or make any hard soap; which vessels, with the covers thereto affixed, and also the pipes that convey the waste or salt lees from the said coppers, pans, or other utensils, shall be locked and sealed down by the officer, as soon as the fire is damped or withdrawn, whenever any soap or any thing of a soapy quality shall be left therein. Which said locks, and keys to the same, and all other necessary fastenings for securing the said vessels and pipes, shall be provided by the surveyor or supervisor, at the expence of the maker. And if any person shall make any hard soap before he shall have affixed such covers, or shall refuse to pay for the locks and keys and other fastenings as aforesaid, or shall wilfully break or damage any such lock, or seal, or other fastening; he shall forfeit 20 l. 5 G. 3. c. 43. *f. 15.*

Officer to enter
and survey.

6. The officer shall at all times, by day or night, and if in the night then in the presence of a constable, be permitted on request to enter the house, boiling house, warehouse, or other place, used by any maker of soap; and by gaging, weighing or otherwise, take an account of the quantity, and thereof make return in writing to the commissioners or whom they shall appoint, leaving a true copy, if demanded, under his hand with the maker; and if he shall refuse or neglect to leave such copy (after demand in writing, 12 G. c. 28. *f. 30.*) he shall forfeit 40 s. 10 An. c. 19. *f. 12.*

Notice of the
time of working.

And if any maker shall obstruct the officer, he shall forfeit 20 l. *f. 15.*

7. Every maker of soap, before he begin any making, if within the bills of mortality, shall give 12 hours, if elsewhere, 24 hours notice in writing to the officer, of the time and hour when he intends to begin; on pain of 50 l. 11 G. c. 30. *f. 33.*

And putting lees or lye into the copper or other utensil, shall be deemed a beginning such making, so as to subject him to the forfeiture. *f. 34.*

And if the maker shall not begin in six hours after the time mentioned in the notice within the bills, and in 12 hours elsewhere; the notice shall be void. *f. 35.*

And if the copper or other utensil be locked or sealed down, the officer shall attend to unlock and open the same, after the maker hath given to him 12 hours notice if within the limits of the head office in *London*, and elsewhere 24 hours notice, of such his intention. And if by any contrivance such maker shall open any copper, pan, utensil, or pipe, before the same shall have been opened by the officer; he shall forfeit 20 l. 5 G. 3. c. 43. f. 15.

And no maker of hard soap shall, upon any pretence of cleaning or washing any copper, pan, or other utensil, used in boiling of soap, or on any other pretence, presume to light any fire under the same, without first giving such notice; on pain of 20 l. f. 16.

8. Every maker of hard soap shall make use of regular square or oblong frames only, for the cleansing or putting his soap (whether perfect or not perfect) into, when taken out of the vessel where it was boiled or prepared; and the bottom, sides, and ends of every such frame shall be 2 inches thick at the least; and such frame shall not exceed 45 inches in length, nor 15 inches in breadth; of which frames he shall give notice in writing at the next office, before he shall use the same; all which said frames shall be marked and numbered by the surveyor or supervisor, at the expence of such maker: on pain of forfeiting, for every such offence respectively, the sum of 20 l. 5 G. 3. c. 43. f. 17.

Frames to be made use of in working.

9. If any stale or rotten soap, or cuttings, be put into the copper or pan, in presence of an officer, to be refreshed or new made; the officer shall make allowance of the duty, and certify the same upon his report. 10 *An. c. 19.* f. 28.

Reworking stale soap.

But if it shall be put into any making of soap, without giving to the officer 12 hours notice in writing within the bills, and 24 hours elsewhere; there shall be no allowance made for it. 11 G. c. 30. f. 37.

And if any officer shall falsely pretend that he had such notice when he had not, and make and certify such allowance; he, and also the maker, shall forfeit 10 s. for every pound so certified. f. 38.

But no *hard* soap (whether perfectly made or not), after the same shall have been cleansed or put into the frame, shall on any pretence be returned or put again into the copper or other utensil, for boiling or reworking; and if it shall be so returned, it shall be charged again with the duties. 5 G. 3. c. 43. f. 18.

Excise. (Soap.)

And the officer shall allow to the maker in his charge, one pound in every ten of such hard soap; which shall be a full compensation for all waste, losses or damages. *f. 14.*

Scales and weights.

10. And the maker shall keep just scales and weights where he makes his soap, and permit and assist the officer to use them; on pain of 10 l. *10 An. c. 19. f. 13.*

And by the 10 G. 3. c. 44. if he shall use insufficient scales or weights, he shall forfeit 100 l. but not to be prosecuted both on this and the former act.

Officer to charge for materials missing.

11. And the officer shall be permitted to take an account of the quantities of oil, tallow, pot-ashes, lime, and other materials proper to be made into soap, that shall be in the maker's possession; and if the officer shall miss any quantity of them, which he had taken account of the last time he was there, and shall not on reasonable demand receive satisfaction what is become of them, the officer may charge him with such quantity of soap, as such materials in his judgment would have made, not exceeding 14 gallons of such ingredients (besides the lees) for every barrel. *10 An. c. 19. f. 14.*

Removing soap unsurveyed.

12. And no maker shall (on pain of 20 l.) remove any soap of which no account hath been taken by the officer, from where it was made, without giving the officer within the bills 24 hours notice, and in other parts two days notice, of his intention to remove the same. *10 An. c. 19. f. 16.*

Unsurveyed to be kept separate.

13. And the makers shall keep all the soap by them made, and not surveyed, separate from that which hath been surveyed, for 24 hours after making, within the bills, or two days in any other place; unless it shall have been sooner surveyed; on pain of 5 l. *10 An. c. 19. f. 17.*

Concealing.

14. And if any maker shall conceal any soap or materials; he shall forfeit the same, and also 500 l. *1 G. 2. c. 36. f. 14, 15.*

And by the 5 G. 3. c. 43. If the officer shall have cause to suspect, that soap is privately making in any place; or that any soap is concealed with intent to avoid the duty; in such case, on oath made by such officer before a commissioner or one justice residing near to the place, setting forth the ground of his suspicion, such commissioner or justice may, if he shall judge it reasonable, by special warrant authorize such officer, by day or night (but if in the night, in presence of a constable) to enter into every such place suspected, and to seize and carry away

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away as forfeited all such soap as he shall there find so privately making, together with all materials then ready or preparing for making of soap, and likewise all such soap as they shall find so concealed, together with the boxes or other package: And the person that shall be found privately making soap, or in whose possession such soap shall be found, shall forfeit 100 l. *f. 20.*

15. The maker within the bills shall monthly, and elsewhere every six weeks, make entry in writing at the next office, of all the soap by him made within the said month or six weeks, setting forth the weight, and what quantity was made at each boiling in the several weeks; on pain of 50 l. Which entries shall be on the oath of the maker, or chief workman, according to the best of his knowledge and belief. The said entry and oath within the bills, to be at the general office, and elsewhere with the collector and supervisor. *10 An. c. 19. f. 9.*

But no maker shall be obliged to send further to make entry, than to the next market town. *f. 10.*

16. And the measure of soap shall be this; every barrel shall contain 256 lb. averduois: half barrel 128; firkin 64; half firkin 32; besides the weight or tare of the cask. And all soap (except hard cake soap, and ball soap, *10 An. c. 26. f. 111.*) shall upon making thereof be put by the maker into such cask, and none other. *10 An. c. 19. f. 8.*

And all soft soap that shall be filled in any other cask, less than barrels, half barrels, firkins, and half firkins, shall be forfeited, and also 5 l. *12 An. st. 2. c. 9. f. 19.*

17. The maker within the bills, shall within four weeks, and elsewhere within six weeks after entry, clear off the duties; on pain of double duty; and no maker, after such default in payment, shall sell or deliver out any soap, till he hath paid off his duty; on pain of double value. *10 An. c. 19. f. 11.*

18. By the *10 An. c. 19.* Any person who shall use soap in making of cloths, or other manufactures of sheeps or lambs wool only, or manufactures whereof the greatest part of the value of the materials shall be wool; or in finishing the said manufactures; or preparing the wool for the same; or in whitening new linen in the piece, (or his chief workman)—may make proof in writing by affidavit, before the collector or supervisor, specifying the kinds and quantity of the manufactures, and the days between which, and the places where the same were made,

Entry of soap made.

Measure of soap.

Payment of the duties.

Drawback for soap used in the woollen manufacture.

prepared, or whitened, and the quantity and kind of soap consumed therein, and that no allowance for the duty on such soap hath been made: whereupon the collector shall repay the duty on such soap. *f. 29.*

And the said affidavit need not be stamped; and no fee shall be taken, except 4d. for writing the affidavit, on pain of treble damages to the party grieved, with full costs; to be recovered as the other penalties. *f. 30.*

And any person making false affidavit, shall forfeit treble value of the allowance; and for the second offence (on conviction in the courts at *Westminster*) shall suffer as for wilful perjury. *f. 31.* And the like is enacted by the 12 *An. st. 2. c. 9. f. 16, 17, 18.* in regard to the additional duties by that act.

Soap carried
coastwise.

19. Cocquets granted for shipping soap, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocquet, the same shall be forfeited, and seized, together with the package. 23 *G. 2. c. 21. f. 29.*

Importation and
exportation.

20. No soap shall be imported, otherwise than in some package, containing at least 224 pounds of neat soap, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit 50*l.* 23 *G. 2. c. 21. f. 27.*

But on information brought against any such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the soap was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner, in payment of the forfeiture. 26 *G. 2. c. 32. f. 8.*

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all soap forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 *G. 2. c. 21. f. 28.*

Soap that hath paid the duty may be exported; and the duties shall be drawn back. 10 *An. c. 19. f. 22, 23, 24.* But no drawback shall be allowed on the exportation of any foreign soap imported. 23 *G. 2. c. 21. f. 36.*

The officers of excise or customs may seize any soap with the package, that shall be found in any vessel, cart, or other carriage; where they shall have good reason to believe that the same was made in some private workhouse,

or clandestinely imported without payment of duty, or that the same has been exported and relanded after repayment of the duty; and if the party in whose possession the same shall be found, shall not at the hearing of the information, make it appear that the duty hath been paid or secured, he shall forfeit 5 l. for every 100 pounds weight; and also the goods and package shall be forfeited. 23 G. 2. c. 21. f. 31.

And if any person shall knowingly harbour or conceal any soap unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50 l. for every hundred weight, together with the goods and package. 23 G. 2. c. 21. f. 32.

And where any such soap shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation at the next market town, on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment thereon shall not be liable to any appeal, or be removed by certiorari. 23 G. 2. c. 21. f. 33.

21. The excise laws shall be in force for managing these duties; and the penalties (except where it is otherwise herein directed) shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and distributed, half to the king, and half to him that shall sue. 10 An. c. 19. f. 26. 11 G. c. 30. f. 39. 24 G. 2. c. 40. f. 33.

22. And where any soap shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not, the proof shall lie on the claimer, and not on the officer. 23 G. 2. c. 21. f. 35.

23. And if the party is not satisfied with any judgment of the justices on the act of 23 G. 2. c. 21. abovementioned, he may appeal to the next quarter sessions (except in the case before mentioned, where no person shall claim the goods seized). f. 37.

Excise. (Soap.)

Mitigation.

24. And on information on the said act of the 23 G. 2. the mitigation shall not reduce the penalty to less than a fourth part, over and above the costs to be allowed. *f. 38.*

Utensils liable.

25. And all soap, materials, and utensils in the custody of the maker, or of any in trust for him, shall be liable to the duties and penalties, as if the debtor or offender were the lawful owner. 10 *An. c. 19. f. 20.*

XIV. Spirituous liquors.

So far as running of brandy and other spirituous liquors falleth in with the running of other uncustomed goods; see the first part of this title concerning the Customs in general.

Duty on importation.

1. By the several acts a general duty of excise is laid on every gallon of spirituous liquors imported (over and above the customs) as follows; *viz.*

Single brandy, spirits or aqua vitæ, 4 s. 8 d. Double brandy, spirits, or aqua vitæ, 8 s. 8 d.

Which shall be raised as the duties on other exciseable liquors. 12 C. 2. c. 23. 12 C. 2. c. 24. 4 & 5 W. c. 3. 4 *An. c. 6.* 6 G. 2. c. 17.

Arrack from the *British* colonies in the *East Indies*, the same as for brandy and foreign spirits imported.

And by the 32 G. 2. c. 10. there shall be paid an additional duty of 12 d. in the pound, according to the value in the book of rates, on all foreign brandy and spirits imported (except rum, of the produce of the *British* sugar plantations.) *f. 1.*

And by the 33 G. 2. c. 9. over and above all other duties, there shall be paid an additional excise duty of 1 s. for every gallon of single brandy, spirits, or aqua vitæ, imported; and of 2 s. for every gallon of brandy, spirits, or aqua vitæ above proof, commonly called double brandy, imported. *f. 8, 9.*

And by the 6 G. 3. c. 47. for every gallon of single brandy, spirits, or aqua vitæ imported, not being the produce of the *British* colonies or plantations, a further excise duty of 6 d; above proof, 1 s.

Officers may take samples on ship-board.

2. To enable the gagers the better to ascertain the proof of all foreign imported liquors liable to the duties of excise; it shall be lawful for the gagers or other officers of excise, at any time before the gaging, to take a sample not exceeding half a pint, out of each cask or other package

Excise. (*Spirituous Liquors.*)

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kage containing foreign spirituous liquors imported, without paying any thing for the same. 32 G. 2. c. 29.

3. And if any person shall land any *French* brandy, before the duty be paid or secured, or without licence from the proper officer so to do; he, and every person aiding therein, or concealing the same when landed, shall not only forfeit the same, but also double value. 1 An. st. 2. c. 14.

And if any officer of the customs or excise shall connive thereat; he shall be incapable to hold any office in the revenue, and forfeit 500 l. f. 2.

4. And the officers of excise may go on board any ship or vessel, and search in like manner as the officers of the customs may do, for any exciseable liquors, and seize all such as shall be forfeited, and such as shall be unshipped before entry and payment of the duties, together with the casks and other package. 11 G. c. 30. f. 1.

5. And if any officer of the excise have cause to suspect, that any foreign spirits shall be fraudulently concealed in any place, entred or not entred, if it is within the bills of mortality, then on oath made before two commissioners, if elsewhere, before one justice, where he suspects them to be concealed, setting forth the ground of his suspicion; he or they may by special warrant authorize such officer by day or night, but if in the night in presence of a constable, to enter, seize, and carry away the same as forfeited, together with the casks or vessels: and if any person shall obstruct such officer, he shall forfeit 100 l. 11 G. c. 30. f. 2.

6. And by a general clause in the 8 G. c. 18. All brandy, arrack, rum, spirits, and strong waters, or foreign, and all foreign exciseable liquors forfeited, together with the casks or other package, may be seized by any officer of the customs or excise, or persons deputed by warrant from the lord treasurer, or under treasurer, or by special commission under the great or privy seal, and no other person. f. 24.

7. And if any person shall obstruct any officer of the customs or excise, in seizing or securing any of the said liquors, or endeavouring to rescue them after seizure, or shall after seizure stove, or otherwise damage any cask, or vessel; he shall forfeit 40 l. 8 G. c. 18. f. 25.

8. But no person shall be intitled to any reward given on such seizure, unless he give notice to the next officer of excise, or to the supervisor, in 48 hours; who shall, on such notice, take an account of the species and quantity;

Excise. (*Spirituous Liquors.*)

tity; nor shall such goods be afterwards removed without a permit from such officer of excise, on pain of being reſeized. 12 G. c. 28. ſ. 6.

In what ſhips to
be imported.

9. If any foreign brandy, arrack, rum, ſtrong waters, or ſpirits of any kind ſhall be imported, in any ſhip or veſſel of 100 tons burden or under (except only for the uſe of the ſeamen, not exceeding two gallons each); ſuch veſſel with her tackle, and alſo the ſpirits, ſhall be forfeited. 5 G. 3. c. 43. ſ. 27.—Except rum, or other ſpirits of the growth and manufacture of the *British* ſugar plantations; which may be imported in any veſſel of not leſs burden than 70 tons. 6 G. 3. c. 46. ſ. 9.

And to prevent clandestine landing of ſpirits from *Ireland*; if any brandy, rum, ſtrong waters or other ſpirits ſhall be entred or ſhipped for exportation from *Ireland*, to any place not within the ſame kingdom, in any veſſel under the burden of 100 tons (except only for the uſe of the ſeamen, not exceeding two gallons each); the ſaid veſſel with the tackle and furniture, and alſo all ſuch ſpirits, ſhall be forfeited. ſ. 30.

Ships hovering
near the coaſt.

10. And where any veſſel of 50 tons or under, being in part or fully laden with brandy, ſhall be at anchor, or within two leagues from the ſhore, and not proceeding on her voyage, wind and weather permitting; the commander of any man of war or armed ſloop appointed for the guard of the coaſt, or the commander of any ſloop or veſſel in the ſervice of the customs, may compel the maſter to come into port; and the ſame ſhall be liable in all caſes as ſhips hovering within the limits of any port. 6 G. c. 21. ſ. 31.

And if the maſter, purſer, or other perſon having charge of the veſſel, ſhall ſuffer any brandy (or other uncuſtomed goods) to be put out of the ſhip into any hoy, lighter, boat, or bottom, to be laid on land; he ſhall, beſides the other penalties, ſuffer ſix months imprisonment. 6 G. c. 21. ſ. 32.

And by the 9 G. 2. c. 35. Where any veſſel coming from foreign parts, and having on board any foreign brandy or ſpirits, in caſks under ſix gallons (except only for the uſe of the ſeamen, not exceeding two gallons each) ſhall be found at anchor, or hovering within two leagues of the ſhore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all ſuch ſpirits, with the caſks and other package, or the value thereof, ſhall be forfeited (whether bulk ſhall have been broken or not); and the ſame may

be

be seized, or the value thereof sued for by the officers.

f. 22. And if such vessel do not exceed the burden of 50 tons, the said vessel also, together with her tackle and furniture, shall be forfeited. 3 *G.* 3. *c.* 22. *f.* 5.

11. No brandy shall be imported in any vessel not containing 60 gallons at least; on pain of forfeiting the same, or the value. 4 *W.* *c.* 5. *f.* 8. In what casks to be imported.

And no *geneva*, or *rum*, shall be imported in any vessel or cask, not containing 60 gallons at the least (except only for the use of the seamen, not exceeding two gallons each); on pain of forfeiture. 5 *G.* 3. *c.* 43. *f.* 28.

Provided, that if it shall be made appear to the satisfaction of the commissioners of the customs, that any rum, being the produce of any of his majesty's dominions in *America*, shall be imported from thence in small casks, without fraud or concealment, either for the use of the master in the voyage, or for the private use of merchants or traders importing the same, or designed as presents, and not by way of merchandize; they may, if they think proper, admit such rum to an entry, and cause the duties to be accepted instead of the forfeiture. *f.* 29.

12. All rum or spirits of the growth or manufacture of the *British* sugar colonies (imported directly from thence) on entry made (within 30 days after report made by the master or purser of the contents and loading of the ship, 31 *G.* 2. *c.* 36. *f.* 5, 6.) and before payment of the duty, may be landed and put into warehouses, provided at the charge of the proprietor or importer, and approved of by the commissioners; the proprietor or importer first giving bond for payment of the duty, if it be sold (within 12 calendar months; and if it be not sold in that time, then to pay the duty at the end of 12 calendar months, 6 *G.* 3. *c.* 47. *f.* 4.) according to the gage taken at the time of landing and lodging in the warehouse. 15 *G.* 2. *c.* 25. *f.* 1. Rum to be warehoused on importation.

And if any rum or spirits be landed, before entry at the custom house and with the collector of excise, and the duties secured, or without warrant for landing, or without the presence of an excise officer; the same shall be forfeited, or the value thereof. *f.* 3.

And before it be landed and lodged in the warehouse, a mark shall be set upon every cask, mentioning the quantity, and the proprietor or importer; and the warehouse keeper and excise officer shall each keep a book, and enter the particulars carried in or out, and when, and for what use delivered; and every six months, or oftener if required,

transmit

Excise. (*Spirituous Liqueurs.*)

transmit an account thereof in writing, and on oath, to the commissioners of excise, who shall in one month examine the same: and if any rum or spirits shall be delivered contrary to this act, the warehouse keeper or officer offending shall be disabled from holding any publick employment, and forfeit 100 l. *f. 4.*

And the rum or spirits may be delivered out of the warehouse, on payment of the excise, and on producing to the warehouse keeper, and the excise officer attending the warehouse, a certificate of such payment; and the warehouse keeper shall give a permit therewith, signed by the excise officer, to prevent the seizing thereof. *f. 5.*

But no proprietor, importer, or buyer, shall receive out of the warehouse less than one vessel of 20 gallons, unless for the use of seamen in a voyage. *f. 6.*

And the proprietor or importer may fix a lock on the warehouse and keep the key; and the excise officer may put on another, and keep the key; and the proprietor or importer may in presence of the warehouse keeper, or excise officer, at all reasonable times, view, and take out as aforesaid. *f. 7.*

And if any rum or spirits remain in the warehouse above (12 calendar months, 6 G. 3. c. 47. *f. 4.*) without paying the duty, the commissioners of excise may sell them by auction, and pay themselves the duty and charges, rendring the overplus to the proprietor or importer. *f. 9.*

13. For every gallon of spirits made of imported wine or cyder, shall be paid in the whole sum of 1 s. 3 d.

For every gallon of strong waters or aqua vitæ, made of any other materials, 7 ½ d.

If from foreign or from home materials mixed with foreign; then a further duty of 6 d.

If from brewers wash or tilts, 5 ½ d.

If from drink brewed of malted corn, 5 ½ d.

If from other *British* materials, or any mixture therewith, 5 d.

For every gallon of low wines or spirits of the first extraction, made from foreign materials, 1 s. 7 d.

From brewers wash or tilts, 1 s. 4 d.

From drink of malt, 5 d.

From any other *English* materials, 7 d.

But low wines or spirits of the first extraction drawn from melasses only, shall be liable only to 1 s. a gallon; and all spirits from low wines, or spirits of the first extraction,

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tion, drawn from melasses only, shall be chargeable with 6d. a gallon. 19 G. 2. c. 12. f. 37.

Note; All spirits drawn by any distiller from any mixture of spirits with any kind of wash or other liquor (except common water) shall be deemed low wines, and chargeable with the duties imposed on low wines drawn from foreign materials. 10 & 11 W. c. 4. f. 9.

Moreover by the 33 G. 2. c. 9. an additional duty is laid as follows:

For every gallon of low wines, or spirits of the first extraction, made from any sort of drink or wash, brewed or made from any sort of malt or corn, or from brewers wash or tilts, or any mixture with brewers wash or tilts, 5d. f. 2.

For every gallon of strong waters or aqua vitæ, made for sale, of the materials aforesaid, or any of them, 1s. 3d. f. 3.

For every gallon of low wines or spirits of the first extraction, made from any foreign or imported materials, or any mixture therewith, 1s. 3d. f. 4.

For every gallon of spirits, made from any foreign, or imported materials, or any mixture therewith, 8d. f. 5.

For every gallon of low wines or spirits of the first extraction made from cyder or any kind of *British* materials, except those before mentioned, or any mixture therewith, 6³/₄d. f. 6.

For every gallon of spirits, made for sale, from cyder or any kind of *British* materials, except those before mentioned, 1s. 1³/₄d. f. 7.

And by the 2 G. 3. c. 5. There shall further be paid, for spirituous liquors made for home consumption, or imported (not being the produce of the *British* colonies), these several additional duties:

For every gallon of low wines or spirits of the first extraction, made from any sort of drink or wash brewed, or made from any sort of malt or corn, or from brewer's wash or tilts, or any mixture with brewer's wash or tilts, 1d.

For every gallon of strong waters or aqua vitæ, made for sale, of the materials aforesaid or any of them, 3d.

For every gallon of low wines or spirits of the first extraction, made from any foreign or imported materials, or any mixture therewith, 3d.

For every gallon of spirits, made from any foreign or imported materials, or any mixture therewith, 2d.

For

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For every gallon of low wines or spirits of the first extraction, made from cyder, or any kind of *British* materials (except those before mentioned) or any mixture therewith, 1 $\frac{3}{4}$ d.

For every gallon of spirits made for sale, from cyder, or any kind of *British* materials (except those before mentioned), 2 d.

For every gallon of single brandy spirits or aqua vitæ imported (not being the produce of the *British* colonies), 6d.

For every gallon of brandy spirits or aqua vitæ above proof, commonly called double brandy, imported, not being the produce of the *British* colonies, 1 s. *f. 1.*

Note; Spirits made for *exportation* shall be duty free (as will appear afterwards).

Concerning distillers.

14. Any person who shall set up any work or office for that purpose, and thereof shall give notice to the commissioners of excise in ten days, may distill for sale, or to be retailed, any low wines or spirits from drink brewed from malted corn or cyder, and rectify and refine any such spirits of their own making only, paying duties and subject to the same regulations as other distillers. 8 & 9 *W. c.* 19. *f. 13.*

And by the 12 *An. st. 2. c. 3.* Any person may distill brandy or spirits made from *British* malt or cyder, altho' he hath not served seven years apprenticeship. *f. 9.*

And by the 2 *G. 3. c. 5.* Every person who shall sell or deal in any liquors which are chargeable with any duty of excise, and who shall also make or distill any spirits, shall be deemed a common distiller for sale, and liable to the survey and duties. *f. 4.*

Size of the stills.

15. But no person who shall make or rectify any spirits for sale, or who shall sell or deal in any sort of spirituous liquors, shall have any still or number of stills, unless such still if a single one, or such stills taken together if more than one, shall contain at the least 100 gallons; on pain to forfeit for every such still 100 l. And such stills as shall contain separately less than 100 gallons, shall be all placed in one room or workhouse; on pain to forfeit for every such still not so placed, 100 l. 2 *G. 3. c. 5. f. 4.*

Notice of houses, stills, and vessels.

16. No common distiller or maker of low wines, spirits, or strong waters, for sale, shall set up any tun, cask, washbatch, copper, still, or other vessel, for making or keeping any worts, wash, low wines, spirits, or strong waters, nor alter nor enlarge the same, nor have any of them

them private or concealed, or any private warehouse, storehouse, cellar, or other place for making or keeping any the said liquors, without first giving notice at the next office of excise; on pain of 20*l.* and he in whose occupation any of the same shall be, shall forfeit 50*l.* 8 & 9 *W. c.* 19. *f.* 10.

And if any officer of excise shall have cause to suspect any such private still, back, or other vessel, spirits, low wines, wash or other materials prepared for distillation, to be set up or kept in any place, and shall make affidavit before a justice of the peace, and therein declare the grounds of his suspicion; he may in the day time, and in presence of a constable, by warrant from such justice to be directed to such officer of excise, break open the door or any part of such suspected house or place, and enter and seize the same, and detain them there; and if they shall not in 20 days be claimed by the owner, they shall be forfeited, and sold at the next general day of sale; and if they be claimed in 20 days, the person claiming shall forfeit for every warehouse or other place, in which any such still, back, or other vessel shall be found, and also for every such still, back, and other vessel found therein, 200*l.* 10 & 11 *W. c.* 4. *f.* 7. And by the 10 & 11 *W. c.* 21. he shall incur this forfeiture, whether he shall make any such claim or not. *f.* 23.

But if on breaking open any such door or house, no such private back, still, or other vessel, spirits, low wines, wash, or other materials for distillation, shall be found, the officer shall make good the house or place so broken up, or make satisfaction to the owner to be adjudged by the two next justices (1 *Q.*); or the party injured may bring his action for the damages; and the same shall be paid by the commissioners out of the revenue of excise; and if any person shall obstruct such officer, he shall forfeit 200*l.* 10 & 11 *W. c.* 4. *f.* 8.

17. Every distiller shall ten days before he distills or makes any spirituuous liquors, make entry at the next office of excise, of every still and other vessel which he shall make use of for brewing, distilling, working, making, laying or keeping any worts, wash, low wines, spirits, or strong waters; and also of the vessels used for brewing or keeping of the after runnings or feints from the second extraction (which last mentioned vessels shall not at any one time exceed two in number) and also of all such new utensils as they shall make use of for the purposes aforesaid, on pain of 50*l.* for every such still or other

Vessels to be marked.

other vessel, used and not entred: And the distiller shall shew to the officer every still or other vessel entred, and the officer shall mark the same with a particular and durable mark; and every vessel used by such distiller without being so shewn or marked, shall be deemed a vessel or utensil of which no entry has been made; and if any person shall rub out or deface such mark, he shall forfeit 20 l. 24 G. 2. c. 40. s. 22.

Private cocks
and pipes.

18. No distiller shall have any private pipe or stop cock, or other conveyance, by which any wash or other liquors fit for distillation may be conveyed from one back or vessel to another, or from any such back or vessel to his still, or into any other place, nor shall have any hole in any back or washbatch, by which any wash or other liquor fit for distillation may be conveyed into or out of the same; on pain of 100 l. 10 & 11 W. c. 4. s. 3.

And the excise officer in the day time, and in presence of a constable, on request made and cause declared, may break up the ground in any distilling house, or the ground near adjoining, or any wall, partition, or other place, to search; and on finding such pipe or other conveyance, may break up the ground, house, wall, partition, or other place, thro' or into which any such pipe or other conveyance shall lead, and may break or cut any such pipe or other conveyance, and may turn any cock to try whether such pipe may convey any wash or other liquor. s. 4.

And if no such pipe or private conveyance be found, the officer shall make good the ground, wall, house, or other place, or make reasonable satisfaction to the owner, to be adjudged by the two next justices (1 Q.) or the party injured may bring his action for damages; the same to be paid by the commissioners out of the revenue of excise. And if any person obstruct such officer, he shall forfeit 100 l. s. 5.

But any distiller may use any pipe, stop cock, or other conveyance above ground, in open view from one end to the other, for letting his wash out of the coolers into his backs or washbatches, and for conveying the wash or worts, out of the back or washbatch into the still. s. 6.

Notice of taking
in materials.

19. The distiller, within the bills, shall 24 hours at least, and elsewhere 48 hours, before he receive any quantity of wine, cyder, sugar, water, or any kind of fermented wash, into his custody, give notice to the officer

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of excise, of the quantity and species, and when he intends to receive the same; on pain of 50 l. 24 G. 2. c. 40.

f. 24.

And by the yearly malt acts, every distiller who shall receive any quantity of cyder or perry into his custody, shall give notice in writing to the officer under whose survey he shall reside, 48 hours before he shall begin to put any of the same into the still, to be drawn into low wines or spirits; and if he shall not give such notice, or shall dispose of any quantity thereof otherwise than by distillation, he shall forfeit 5 l.

20. No distiller shall begin to charge his still, with wash, Notice of beginning to work. spirits, or other materials, without giving six hours notice to the officer of the division, unless at such times as are herein after mentioned, that is to say, from Sep. 29, to Mar. 25, yearly, between the hours of five in the morning and eight in the evening; and from Mar. 25, to Sep. 29, yearly, between three in the morning and nine in the evening: And if he shall not begin to charge his still at the time mentioned in such notice, or within one hour after, the notice shall be void; and he shall be obliged to give another like notice before he begins: And if he shall begin to charge his still (except within the respective times aforesaid) without having given such notice; he shall forfeit 100 l. 33 G. 2. c. 9. f. 22.

21. If any distiller, in preparing his grist for wash, in What proportion of wheat to be used. order for distillation, shall use more wheat, than in the proportion of one quarter of wheat to two quarters of any other grain; he shall forfeit 50 l. 33 G. 2. c. 9. f. 23.

[But by the 11 G. 3. c. 1. which hath continuance till the 20th day after the commencement of the next session of parliament, no low wines or spirits shall be made from any wheat or wheat flour; on pain of forfeiting the same, and also 200 l.]

22. The excise officers by day or by night (but if in the night, in presence of a constable) may enter into all houses Officer to enter and survey. and places made use of by distillers or dealers in the said liquors, and by tasting, gaging, or otherwise, may take an account of the quantity and quality; and if such person shall obstruct the officer, he shall forfeit 50 l. 6 G. c. 21. f. 14.

23. And the officer may take a sample of the low wines Officer may take a sample in the working. or spirits, and of the feints and spent wash, paying for such spirits or low wines after the rate of 10s. a gallon, and for

Excise. (*Spirituous Liquors.*)

the feints and spent wash 1 s. a gallon; and if any distiller, his workman or servant, shall refuse to permit him to take such samples, or shall obstruct him in taking thereof, he shall forfeit 50 l. 24 *G. 2. c. 40. f. 23.*

Concealing from
the gager.

24. If the distiller or maker shall conceal any the said liquors from sight of the gager, he shall forfeit 5 s. a gallon. 3 *W. c. 15. f. 2.*

Officer to charge
for materials
missing.

25. The officer may keep an account of the several sorts of wash which shall be found by him in the hands of a distiller, and upon any decrease of such wash brewed or made from malted corn or corn unmalted, may charge such distiller with so much low wines or spirits of the first extraction as one fourth part of the same wash so decreased shall amount unto; and also with so much proof spirits or spirits of the second extraction, as three fifth parts of the said low wines so charged shall amount unto: and also upon any decrease of wash made from cyder or perry, may charge such distiller upon whom such decrease shall be found, with so much low wines or spirits of the first extraction, as one fifth part of the same wash so decreased shall amount unto; and likewise with so much proof spirits, or spirits of the second extraction, as one half part of the same low wines or spirits of the second extraction shall amount unto. 4 *An. c. 12. f. 4.*

Carrying out of
the still house.

26. No distiller shall deliver or carry out any low wines, spirits, or aqua vitæ, to any of their customers, in cask, or by the gallon, without notice thereof first given to the officer of excise, unless from *Sep. 29, to Mar. 25,* yearly, between five in the morning and eight in the evening, and from *Mar. 25, to Sep. 29,* yearly, between three in the morning and nine in the evening; on pain of 10 l. 7 & 8 *W. c. 30. f. 15.*

Selling on ship-
board.

27. Whereas till of late the importers or proprietors of foreign spirituous liquors, or their factors or agents, were permitted to take samples and land the same without duty paid, whereby they were enabled and did for the most part sell such foreign spirituous liquors whilst on shipboard; and whereas for some time last past, such permission hath been refused, which hath proved a great inconvenience to the said trade; it is enacted, that it shall be lawful for the importers or proprietors of such foreign spirituous liquors, their factors or agents, to take, in the presence of a gager or other excise officer, a sample or samples, not exceeding half a pint in the whole, out of every cask or other package, whilst the same shall be on shipboard, and before land-
ing,

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ing, without paying any duty for the same. 32 G. 2. c. 29. f. 1.

28. Every person who shall retail less than two gallons, Retailers houses to be entered. shall ten days before make entry in writing of all ware-houses, shops, cellars, or other places by him intended to be used, at the next excise office; and of all spirituuous liquors therein; on pain of 20l. for every place, and 40s. for every gallon not entered, and also the liquors and casks. 9 G. 2. c. 23. f. 6.

29. And no spirituuous liquors shall be brought into any such warehouse or other place, without first giving notice Retailer to give notice of bringing in. to the officer of excise; and leaving with him an authentic certificate, that all the duties are paid, or that they have been condemned as forfeited, and expressing the quantity and quality, the name of the seller, and where the duties were paid, or the liquors condemned; on pain of 20l. and the liquors and casks. 9 G. 2. c. 23. f. 7.

30. No *foreign* brandy or spirits, altho' under one gallon Permit on bringing in. shall be received into the custody of any retailer, without a permit signifying that the duties were paid, or that it had been condemned; on pain of forfeiting the same, and the vessel. 8 G. c. 18. f. 13.

31. All dealers in foreign brandy or spirits, who shall receive into their custody *British* spirits, shall keep the same in separate cellars or other places, from their foreign brandy or spirits; on pain of 10s. for every gallon of *British* spirits found in the same place with the foreign spirits, together with the casks in which the said *British* spirits shall be found. British to be kept separate from foreign spirits. 8 G. c. 18. f. 11.

32. It shall be lawful for the officers of excise, to take Officers may take samples in the shop or warehouse. samples, not exceeding half a pint in the whole, out of each cask or other package containing foreign spirituuous liquors, in any shop, warehouse, or other place, belonging to any dealer in the same; paying for such sample (if demanded) according to the market price liquor of the like quality shall be sold for at the time of such sample taken. 32 G. 2. c. 29. f. 2.

33. No retailer shall make any increase of the liquors, Retailer increasing the liquors. after they have been taken account of by the officer, by any private addition thereto of water or other liquor; on pain of 40s. a gallon, and the liquors so mixed shall be seized and forfeited. 9 G. 2. c. 23. f. 8.

And if the officer of excise shall find any increase of *foreign* spirits, over and above the quantity which he found at any dealer's on the last survey, such increase shall be deemed

deemed to be made by foreign spirits for which no duty was paid; and so much as shall be found increased, shall together with the cask be forfeited, unless the owner make it appear, that the increase was made by mixing therewith in the presence of the officer of the division, some of his stock of *British* spirits whereof the officer had taken an account, or by foreign spirits brought with a permit, or that it had been condemned and brought in on due notice given to the officer. 8 G. c. 18. f. 12.

Retailer con-
cealing.

34. The officers at all times by day or night (but if in the night in presence of a constable, oath being first made before a justice dwelling near of a propable cause of suspecting a concealment) may enter into all such warehouses, shops, or other places, and by tasting, gaging, or otherwise, take an account of the quantity and quality; and if any such retailer shall hinder the officer, he shall forfeit 50l. 9 G. 2. c. 23. f. 9.

None to be sold
but in entered
places.

35. And no such liquors shall be sold, but in such warehouse, shop, cellar, or other place, so entered; on pain of 40s. a gallon. 6 G. c. 21. f. 15.

And by the 11 G. c. 30. No *arrack*, whether *British* or foreign, shall be offered to sale, either by wholesale or retail, but in an entered place; on pain of forfeiting the same, with the casks or other vessels, besides the said penalty of 40s. a gallon. f. 3.

Who shall be
deemed a seller
and dealer.

36. Every person who shall have in his custody above 63 gallons, shall be deemed a seller and dealer in such liquors. 6 G. c. 21. f. 18.

Licence for re-
tailing.

37. No person shall retail any distilled spirituous liquors or strong waters, mixed or unmixed, without a licence taken out ten days before, for which he shall pay 40s. yearly; if within the bills, from two commissioners of excise; elsewhere, from the collectors and supervisors within their respective districts. 16 G. 2. c. 8. f. 8. 24 G. 2. c. 40. f. 9.

And every person who shall retail spirituous liquors mixed or unmixed, to be drank in any quantity whatsoever, in any place to him belonging; or shall retail or send the same abroad in less quantity than two gallons, shall be deemed a *retailer*. 17 G. 2. c. 17. f. 20.

Who only shall
have licences.

38. And no such licence shall be granted, except to such persons only who keep taverns, victualling houses, inns, coffee-houses, or alehouses; and all other licences shall be void; and if any licensed person shall exercise the trade of a distiller, grocer, or chandler, or keep a brandy shop for

sale

sale of spirituous liquors, the licence shall be void. 17 G. 2. c. 17. f. 19.

And no licence shall be granted within the limits of the head office of excise in *London*, but to such as occupy tenements of 10l. a year, and pay parish rates for the same; or in places where the occupiers of houses are not rated to the church and poor, then to such persons as pay rent of 12l. a year, and not otherwise; nor to persons in any other part of the kingdom, but such as pay to the church and poor: And no licence shall be of any avail longer than he shall be so qualified. 24 G. 2. c. 40. f. 12. 26 G. 2. c. 13. f. 9.

39. And such persons also shall first be licensed to sell ale or spirituous liquors, by two or more justices of the peace. 16 G. 2. c. 8. f. 11.

To be first licensed to sell ale.

And the justices of the peace, and other officers, shall have the same jurisdiction over such retailers of spirituous liquors, as they have over alehousekeepers. 12 & 13 W. c. 11. f. 18. 2 G. 2. c. 28. f. 10.

40. And no licence shall empower any person to sell spirituous liquors in any place, except in the house or places thereto belonging, wherein they shall inhabit at the time of granting the licence. 17 G. 2. c. 17. f. 22.

To be licensed only where they dwell.

41. Persons retailing without licence shall forfeit 10l. and on nonpayment when demanded, one justice on oath of such neglect shall commit the offender to the house of correction, to be kept to hard labour for two months, or till paid. 16 G. 2. c. 8. f. 9.

Penalty of selling without licence.

And the said penalty shall in no case be mitigated below the sum of 5l. 24 G. 2. c. 40. f. 11. 26 G. 2. c. 13. f. 8.

And the justices may, if they think proper, instead of levying the penalty commit the offender to the house of correction, to be kept to hard labour for two months. 17 G. 2. c. 17. f. 18. 9 G. 3. c. 6. f. 3.

And also all the distilled spirituous liquors that shall be then, or at any time within six months after conviction, found in his custody, house, or other place occupied therewith, whether it be in his own occupation or not, shall by warrant of the said commissioners, or of one justice, be seized, and staved, or otherwise destroyed: And any peace or parish officer, authorized by such warrant, may at any time in six months after conviction enter such places, and break open doors, if not opened on demand. And if any person shall offend again in like manner, the commissioners or justices before whom he shall be convicted of such sub-

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sequent offence, may inflict the penalties by any former law to be inflicted for such offence, and also commit the offender to the house of correction, to be kept to hard labour not exceeding three months. 24 G. 2. c. 40. f. 13. 9 G. 3. c. 6. f. 3.

And the conviction shall be in this form, or to the like effect, viz.

Middlesex. A. B. is convicted on his own confession (or on the oath of A. W.) of having sold strong waters in the parish of _____ in this county, on the _____ day of _____ without being duly licensed thereto: This is the first or second conviction. Given under my hand and seal, &c.

And the commissioners, or one justice, on oath of any offence against this act, or any other act for regulating the retailing of spirituous liquors, may grant a warrant to any of the peace officers, or other parish officers, to enter and search the houses and other places, where the offence shall be sworn to have been committed, or in the occupation of the persons sworn to be guilty thereof, and they may break open the doors if not opened on demand, and seize all such distilled spirituous liquors as they shall there find; and detain the same, till the offence shall be heard and determined; and if the offender be convicted, the liquors shall be forthwith staved; and if he be not convicted, the same shall be restored. 24 G. 2. c. 40. f. 14.

Hawking in the streets.

42. No person shall hawk, sell, or expose to sale any spirituous liquors about the streets, highways, or fields, in any wheel-barrow or basket, or on the water in any boat, or in any other manner; or shall sell or expose the same to sale, on any bulk, stall or shed, or any other place other than as above is allowed; on pain of 10l. And one justice on his own view, or confession, or proof of one witness, may convict him; whereupon he shall immediately pay the 10l. to a churchwarden or overseer: And on refusal or neglect, the justice shall commit him to the house of correction to be kept to hard labour for two months to be reckoned from the day of commitment; and he shall not be discharged till he pay the sum, or till the two months be expired. If there is no informer, it shall be wholly to the use of the poor; otherwise half to the informer, and half to the poor. 9 G. 2. c. 23. f. 13.

And any one justice, on information on oath against such person, may (without any previous summons) issue his warrant for apprehending and bringing him before some

some justice where the offence was committed. 11 G. 2. c. 26. f. 4.

And any person may seize and detain him, until he may give notice to the constable, churchwarden, overseer, or other peace or parish officer; who shall carry the person so seized and detained, before a justice of the peace, who shall proceed thereon as in case where he is brought by the constable. 11 G. 2. c. 26. f. 5.

M. 13 G. 2. K. and Crofts. A woman was convicted for selling gin, and it appearing that she was a feme covert, it was objected that she could not be convicted, for as she could make no contract, it must be taken to be her husband's sale; or if she could be convicted, the husband ought to have been joined for conformity. It was answered, that where the crime is of such a nature, as can be committed by her alone, she may be prosecuted without her husband; which being a proceeding grounded merely on the breach of the law, he shall not be included, unless privy: In this case there may be imprisonment and being kept to hard labour. And by the court, We think the conviction is right; for this is not like the cases that found only in damages. The wife may be convicted for recusancy. And though she cannot have the benefit of the contract, yet she as well as a servant may do the act of vending. Besides, there would be a plain way to evade the act, if femes covert could not be convicted. *Str.* 1121.

43. If any less quantity than two gallons shall be sold or delivered in any clandestine manner, to any person, in any house, outhouse, stable, barn, shed, or other place, part of or belonging to any house or farm; in such case, the occupier or occupiers (if more than one) consenting thereto, shall be deemed retailers, and forfeit as selling without licence. 11 G. 2. c. 26. f. 1.

Occupier of the house shall be liable.

44. Persons giving away spirituuous liquors, to servants or apprentices fetching goods from their shops, shall be deemed retailers. 9 G. 2. c. 23. f. 16.

Persons giving away spirituuous liquors.

45. If any master or other person shall agree to pay any workman, servant, or labourer, or other person employed by him or for him, so much money for wages, and so much spirituuous liquors, as together with the money shall amount to the value of the wages usually paid in like cases; or shall set off or deduct any part of the wages, for any spirituuous liquors; he shall be deemed a retailer, and forfeit 20l. over and above the other penalties, and such servant shall be intituled to his whole wages. 9 G. 2.

Paying wages in spirituuous liquors.

c. 23. . 11.

Apothecaries selling
spirituous
liquors.

Selling in gaols
or workhouses.

46. But nothing herein shall extend to physicians or apothecaries selling the same as medicines. 9 G. 2. c. 23. f. 12. 16 G. 2. c. 8. f. 12.

47. No licence shall be granted for retailing of any spirituous liquors, within any gaol, prison, house of correction, workhouse, or house of entertainment for parish poor; and if any keeper of such prison or house shall sell, use, lend, or give away, or knowingly suffer any spirituous liquors or strong waters to be sold, used, lent, or given away in any such gaols or houses, or brought into the same, except such as shall be prescribed by the direction of a regular physician, surgeon, or apothecary, from the shop of some regular apothecary,—he shall forfeit 100l. half to the king, and half (with full costs) to him who shall sue in the courts at *Westminster*. And if any such person shall offend again in like manner, and be a second time convicted; he shall forfeit his office. 24 G. 2. c. 40. f. 17.

And any justice, on information on oath that spirituous liquors or strong waters are kept and disposed of in any such prison or other place, may enter and search, or empower by warrant any constable to search for and seize all such liquors as shall be found (except such as are directed to be used medicinally) and to seize and destroy the same. f. 18.

And if any person shall bring, or endeavour to bring any such liquors (except in the way of medicine as before mentioned) into any such gaol or other place, the gaoler or his servants may apprehend and carry such offender before any justice of the peace, who shall hear and determine such offence in a summary way; and if by the oath of one witness, or otherwise, such person shall be convicted, he shall be committed to prison or to the house of correction, not exceeding three months, unless he shall immediately pay down such fine not exceeding 20l. and not less than 10l. as the justice shall impose, to be paid half to the informer, and half to the poor of such prison or workhouse. f. 19.

And the gaoler, keeper, master, or other officer, shall procure a copy of the three preceding clauses, to be printed or fairly written, and hung up in one of the most publick places of his gaol, house of correction, or workhouse aforesaid, and renew the same from time to time, so that it be always kept fair and legible; on pain of 40s. by warrant of one justice, on oath of one witness. And any justice may enter and demand a sight of it, and if it shall

not

not be shewn to him hung up in some publick place fair and legible; he shall immediately convict such person, and so from time to time as often as he shall think fit: half to be to the informer, and half (or the whole if there be no informer) to the poor of such gaol or other place.
f. 20.

48. No person shall recover any debt on account of spirituous liquors, unless it shall *bona fide* have been contracted at one time to the amount of 20s. or upwards; nor shall any particular article in any account be allowed, where the liquors delivered at one time, shall not amount to the full value of 20s. and where no part of the liquors so sold shall be agreed to be returned; and if any retailer, with or without a licence, shall take any pawn by way of security for payment of any money for such liquors, he shall forfeit 40s. by warrant of one justice, half to the poor, and half to the informer; and the owner shall have such remedy for recovering such pawn, as if it had never been pledged. 24 G. 2. c. 40. f. 16.

Recovering debt for spirituous liquors.

49. If any distiller or other person shall knowingly sell or deliver any distilled spirituous liquors, that the same may be unlawfully retailed, or to any unlicensed retailer; he shall forfeit 10l. and treble value of the liquors, half to the king, and half to him that shall sue in the courts at *Westminster*. And if any person guilty of retailing such liquors, shall discover the distiller or person who knowingly supplied him therewith, and prosecute him to conviction, he shall be intitled to his share of the penalty, and indemnified against all penalties incurred by him before that time, for selling spirituous liquors without licence. 24 G. 2. c. 40. f. 15.

Distiller delivering to unlicensed retailers.

50. If any persons to the number of five or more, shall in a tumultuous and riotous manner assemble to rescue any offenders against any act relating to spirituous liquors, or for licensing the retailers thereof, or to assault any person who shall have given or is about to give any information against, or shall have discovered or given evidence against, or shall seize or bring to justice any offender; he, his aiders and abettors, shall be guilty of felony, and transported for seven years. 24 G. 2. c. 40. f. 32.

Riotously rescuing offenders, or assaulting informers.

51. Where any such liquors shall be sold in any such entered place, the officer shall on request of the seller (without fee) give the buyer a certificate signed by him, expressing the quantity, the name of the buyer and seller, and that the duty hath been paid, or that it hath been condemned as forfeited. 6 G. c. 21. f. 16.

Permit for removal after sale.

And

Excise. (*Spirituous Liquors.*)

And no such liquor, exceeding one gallon, shall be carried without such certificate or permit; on pain of forfeiting the same with the casks and vessels. *f. 17.*

And if any person shall take out a permit, and not remove the liquors accordingly, nor return the permit; he shall forfeit treble value: And if there appears not a sufficient decrease in the stock, to answer the quantity in the permit, the officer may seize so much as will answer the quantity. But no person shall receive a permit, without direction in writing of the person (or his servant) from whose stock the goods are to be removed; on pain of 50 l. and in default of payment, three months imprisonment. *11 G. c. 30. f. 10.*

Selling without
a permit, or ped-
lars with one.

52. If any person shall offer any spirituous liquors to sale, not having a permit; or if any pedlar or other trading person, going from town to town, or other mens houses, and trading either on foot, or with any horse or other cattle, or otherwise, shall offer any such liquors to sale, altho' he have a permit: the person to whom they are offered to sale, may seize and detain such liquors, and carry them to the next warehouse belonging to the customs or excise, and bring the person before a justice, to be by him committed to prison, and prosecuted for the penalties incurred for such offence; and such liquors may be prosecuted in the name of the person who stopped or seized the same, in like manner as if they had been seized by an officer. *9 G. 2. c. 35. f. 20.*

Officer neglect-
ing to seize.

53. When any officer of the customs shall neglect to seize and prosecute any vessel, boat, horses, or other cattle or carriage, forfeited for running of brandy, and shall be convicted thereof on his appearance or default, by oath of one witness, or confession; he shall forfeit 50 l. *6 G. 2. c. 17. f. 10.*

Constable neg-
lecting his duty.

54. If any constable or other peace officer, shall refuse or neglect on notice, or his own view, to be aiding in the execution of this, or of the acts of *9 G. 2.* or *10 G. 2.* herein mentioned; he shall, on conviction by the oath of one witness, forfeit 20 l. *11 G. 2. c. 26. f. 7.*

Carrying coast-
wise.

55. All low wines or spirits carried coastwise, without a certificate from the officer of excise where they were made, that the duty hath been paid, shall be forfeited, and seized by the officers where they shall be brought in. *3 G. c. 4. f. 17.*

Shipped as stores.

56. By the former acts, it was generally provided, that home spirits might be exported, and a drawback of the duties was to be allowed thereupon,

But

But by the 6 G. 2. c. 17. for spirits drawn from *British* corn, there was to be allowed a drawback by the excise officers at the port of shipping, of 4l. 18s. a ton, in full of all drawbacks: Except that from every ton of spirits drawn from barley malt, or other corn, there shall be paid by the officers of the customs, when barley is 24s. a quarter, or under 1l. 10s. in like manner as for corn exported. *f.* 7, 8.

And by the 33 G. 2. c. 9. there was to be an additional drawback of 24l. 10s. a ton, on all *British* made spirits exported; oath being made before two commissioners of excise or justices of the peace, that the duties were paid, and that the same were to be exported for *merchandize* to be spent beyond the seas. *f.* 15.

And by the said act of the 33 G. 2. c. 9. it is further enacted, that the same drawbacks and allowances shall be made on spirits shipped as *stores*, to be spent on shipboard, on giving five days notice thereof to the commissioners of excise or to whom they shall appoint, mentioning therein the destination of the voyage, the tonage of the ship, and the number of mariners intended to be employed; which said commissioners, or person appointed by them, shall ascertain the quantity of such spirits which shall be shipped on board such vessel as *stores*, and the size and marks of the casks in which such spirits shall be shipped. And on oath being made before one commissioner or justice of the peace, or other person authorized by the commissioners, that the duties are paid, and that the same are to be shipped as *stores* to be spent in the voyage; and on certificate from the officer of excise where such spirits were shipped of the quantity so shipped, and that the same were proof spirits, and shipped in the presence of such officer, the duties shall be allowed or paid back. *f.* 15.

Provided, that no drawback shall be allowed for spirits shipped as *stores*, in any vessel of less than 100 tons burden. *f.* 16.

And if any such spirits shipped for *stores*, shall be relanded in *Great Britain, Guernsey, Jersey, Alderney, Sark, or Man*, unless in case of distress to save the goods from perishing (of which notice shall immediately be given to the proper officer); then, not only all such spirits and the casks or other package shall be forfeited, but also the person who shall bring, or procure such spirits to be relanded or shall be assisting or otherwise concerned in unshipping the same, or to whose hands the same shall knowingly come after the unshipping, or by whose privity or direction the same shall be relanded, shall forfeit double the amount

Excise. (*Spirituous Liquors.*)

amount of the drawback, and also the casks and other package, together with the vessels and boats, and all the horses or other cattle and carriages whatsoever, made use of in landing, removing, or carrying the same; which may be seized by any officer of the customs or excise. Master assisting therein, or conniving thereat, shall (over and above all other penalties) be imprisoned for six months. And if the package shall be altered at any time after the shipping thereof, and before the arrival of the ship at the place of discharge; the master, or other person taking charge of the vessel, shall forfeit 100 l. *f. 18.*

And whereas spirits shipped for stores are frequently concealed from the officers, on pretence of being put underneath other goods; all spirits shipped for stores, shall, during the time the vessel shall be in port, be openly stowed and kept, so that the officers may at any time examine the same; on pain of forfeiting double the duty of all such stores which shall not be so stowed and kept, or produced and shewn to the officers of excise, according to the rate such spirits would have been charged with if made for home consumption. *2 G. 3. c. 5. f. 21.*

Exportation
duty free.

57. No wash which shall be brewed or made for the making of low wines in order to extract spirits for *exportation*, nor any such low wines or spirits, shall be chargeable with any duties of excise; and all drawbacks thereupon, whether payable by the commissioners of excise or customs shall cease. *2 G. 3. c. 5. f. 5, 6.*

Entry of houses
and vessels for
making spirits
for exportation.

58. Every distiller intending to make or distill spirits for exportation, shall, four days at the least before he shall begin to brew any corn or grain, or to mix any other materials for the making of wash, to be distilled into low wines, in order to extract spirits for exportation, —make a particular entry at the next office of excise, of every still, copper, ton, washbatch, cask, or other vessel, which he shall make use of for the brewing, distilling, working, making, laying, or keeping any worts, wash, low wines, or spirits; and also of the casks or vessels which he shall make use of for the brewing, holding, or keeping of the after-runnings or feints from the second extraction which shall from time to time be drawn from every such still; and also of every workhouse, still-house, storehouse, warehouse, or other place, by him used for the preparing, distilling, or keeping wash, low wines, or spirits; and in such entry shall insert the day when he intends to begin first to brew any corn or grain, or to mix any other materials for the making of wash, to
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be distilled into low wines, in order to extract spirits for exportation; and shall afterwards, from time to time, during the continuance of such entry, give or leave notice in writing at the said office of excise, or with the officer for the division, four hours at least before he shall begin any such subsequent brewing or mixing, and shall insert in such notice the hour when he intends to begin; and shall also, from time to time, during the continuance of such entry, give or leave notice in writing at the said office of excise or with the said officer, four hours at least before any wash is pumped up or otherwise conveyed into the still, and shall insert in such notice the hour when he intends to begin; on pain of 100*l.* for every offence. And if after such entry so made, he shall not begin and proceed to brew or mix his materials as aforesaid, on the day mentioned in such entry or within four hours afterwards; or having given such notice, shall not begin and proceed in such operations at the hour and time mentioned in such notice, or in two hours afterwards; such notice shall be void: and if he shall proceed without fresh entry or notice respectively, he shall forfeit the like sum of 100*l.* 2 *G.* 3. *c.* 5. *f.* 7.

Provided, that nothing herein shall extend to permit or authorize any distiller to make entry of his intention to make spirits for exportation, whose wash still will not contain 1600 gallons, and the spirit or low wine still 800 gallons. *f.* 8.

Neither shall any distiller be permitted to distill spirits for exportation, altho' he may have made entry as aforesaid, unless he shall actually have distilled into spirits all the wash and low wines in his custody for making of spirits for home consumption, at least 48 hours before the day mentioned in such entry. *id.*

Provided, that when any distiller shall be desirous of distilling any spirits for home consumption, and shall have actually distilled into spirits all the wash, low wines, and feints in his possession for the making of spirits for exportation, and such spirits shall be locked up in the warehouse as herein after is directed; he may withdraw his entry for exportation, and be at liberty to make a fresh and like entry for making spirits for home consumption; and after six days from such entry made, he may begin to brew or mix materials for wash to be distilled into spirits for home consumption: And if he shall begin contrary hereunto, he shall forfeit 200*l.* *f.* 9.

59. And

Manner of making and warehousing for exportation.

59. And no wash that shall be brewed or mixed for the extracting of spirits for exportation, shall be pumped up into the still, or otherwise removed from the back or vessel wherein the same was fermented, but in the presence of an officer; and such distiller shall run or draw off his low wines immediately from the still into entred vessels only, and continue them therein, so that the officers may take a true gage of such low wines; and such distiller shall provide a proper cask which shall be duly entred and gaged, into which the spirits shall immediately run from the still, which cask shall be sufficient to contain the whole produce of spirits to be extracted from each still when made up to the proper strength such spirits are required to be; and when the whole quantity of spirits shall be collected in such cask from each still, such distiller shall immediately make up such spirits in the presence of the officer, to the strength of one to six under hydrometer proof: And a true gage of such spirits so made up shall then be taken by the officer. And the said spirits shall immediately afterwards be put into casks, and secured in the presence of the officer in a warehouse to be provided and kept by the distiller, and duly entred at the proper office of excise; which spirits shall be kept there separate from all spirits made for home consumption; and no spirits for home consumption shall be put into the same warehouse; and such warehouse shall be secured under three locks, one to be provided by the distiller, and the other two by the officer of excise at the expence of the distiller; whereof one key to be kept by the distiller, another by the supervisor, and the third by the officer of excise, until the spirits shall be delivered out for rectification, or afterwards for exportation; which warehouse shall be secured to the satisfaction of the supervisor signified under his hand: And if any distiller for exportation shall act contrary to these directions; or shall obstruct the officer in gaging, or in taking samples, or in trying the proof of the spirits (which gages, samples, and trials of proof the officers shall make as often as the commissioners shall direct, the samples to be returned when the commissioners shall find it expedient to give directions for that purpose); or shall open any of the locks in the absence of the officer, or make any way into such warehouse, or remove any part of the partition of it, or make any addition to, or any way alter the same, without notice to the supervisor and his consent in writing first had; or shall remove any of the said spirits from the warehouse,

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Excise. (*Spirituous Liquors.*)

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before the same shall be taken out for immediate rectification or exportation; or shall remove or conceal any wash or low wines for making spirits for exportation, or any such spirits, whether raw, or rectified, either before the same are put into the warehouse or afterwards; he shall forfeit 500 l. 2 G. 3. c. 5. s. 10.

But this shall not hinder any maker of spirits for exportation, from sending such spirits out of his locked warehouse to any other distiller: provided such maker and distiller give bond in double value of the spirits, and double duty which they would have been liable to if made for home consumption, for the due exportation thereof within three months; and provided leave in writing be obtained from the commissioners; and four hours notice thereof at least be given to the officer, that he may receive the same into such distiller's stock; and provided such spirits be removed with a proper certificate from an excise officer: And such distiller shall thereafter be liable to the same penalties for breach of directions, as the maker would have been. s. 11.

And to prevent distillers from working in the absence of the officers; every such distiller shall permit the officer to secure the heads of the stills, when the stills are not at work; and also the pumps for charging the stills and emptying the low wine and spirit cask, so as to prevent the same from being used in the absence of the officer; and also to secure the lid or head of the low wine and spirit casks, and the safe at the end of the worm, to prevent any spirits or low wines from being secreted, whilst the still is at work. s. 18.

60. No raw unrectified spirits shall be permitted to be exported. And when any distiller for exportation shall be desirous to take any of his spirits out of the warehouse in order to be rectified, or when rectified, and again deposited in the warehouse, in order to be immediately shipped for exportation, he shall thereof give four hours notice in writing to the supervisor or officer of excise, and shall insert in such notice the day and hour when he intends so to do, and also the quantity and quality of spirits he desires to take out, and whether such spirits are raw or rectified, and out of what warehouse, and whether the same are for rectification and by whom, or for immediate exportation, or to be sent coastways, and to whom and to what port, and whether for merchandize or stores: And the supervisor or officer shall attend and see the quantity taken out, and take an account of the same.

Taking out of the warehouse for rectifying, or exportation.

And

Excise. (*Spirituous Liquors.*)

And if such distiller shall not begin and proceed to take the spirits out of the warehouse at the time mentioned in the notice, or within two hours after, such notice shall be void; and he shall give a fresh notice four hours at least before he shall begin to take the said spirits out of the warehouse. And if he shall make default in any of the said particulars, he shall forfeit 100 l. 2 G. 3. c. 5. *f. 11.*

And when any raw spirits shall be so taken out in pursuance of such notice, the same shall be immediately pumped up, or put in the presence of the officer into the still or stills, and be rectified forthwith, and the spirits shall be run off immediately from the still into a like cask as is before directed to be provided and entred for the containing of spirits immediately distilled from low wines; and when the whole quantity of spirits designed to be made into brandy shall be collected into such cask from each still, the same shall be immediately made up in the presence of the officer to the strength of one to six under hydrometer proof, at which strength all spirits are to be exported; and a gage of such spirits so made up shall then be taken by the officer, who shall keep an account thereof; and such spirits shall immediately afterwards be put into casks, and in the presence of the officer either carried directly on shipboard for exportation (if intended to be immediately exported), or else into such warehouse to be locked up in manner aforesaid. 2 G. 3. c. 5. *f. 13.*

And if it shall happen, that the spirits distilled for exportation in one day belonging to any distiller, cannot for want of time be conveyed from the spirit cask (into which they are directed to be run immediately from the still) and locked up in the warehouse; the officer shall gage the same, and secure the lid of the said spirit cask, and take samples thereof: which spirits shall be locked up in the warehouse the next morning (if not intended for immediate exportation). And if it shall appear, that any decrease has been made in the quantity or quality of the said spirits so gaged; or if any such spirits shall have been removed in the absence of the officer; the distiller shall be charged for the said spirits so decreased or removed, double the duties which they would have been charged with if made for home consumption. *f. 14.*

61. Provided, that if any such distiller, after he shall have deposited in such warehouse any spirits, whether raw or rectified, made (from corn, malt, or melasses, and not otherwise,

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otherwise, 6 G. 3. c. 46. f. 1.) for exportation, shall be desirous of using any such spirits for home consumption, and shall signify such his desire to the commissioners; they, or two of them, may direct the quantity so desired, to be taken out and delivered to the distiller; he having first paid to the officer appointed to receive the duties on low wines and spirits, the sum of 40l. 10s. for each ton of such spirits of the strength they were taken into such warehouse, to wit, one to six under hydrometer proof. 2 G. 3. c. 5. f. 15.

And for the purposes of this act, each gallon of brandy, or spirits of the strength of one to six under hydrometer proof, shall be reckoned at 7lb. 3oz. the gallon. f. 16.

Provided always, that no less quantity than a ton of such spirits shall be taken out of any such warehouse, at one time for home consumption. 6 G. 3. c. 46. f. 2.

62. When any quantity of raw spirits shall, in pursu-
To be returned
to the warehouse
after rectifying.
 ance of any notice, be delivered out of the warehouse, in order to rectify the same; as many gallons of rectified spirits, and of the same strength when made up, shall be produced, as such quantity amounted to when taken out of the warehouse, allowing only for the feints. And the commissioners shall make just allowances for necessary waste, and the difference that will arise between gaging and weighing spirits. Which feints shall also be run off from the still directly into one large feint cask, and shall be immediately gaged as soon as the still is off, and an account thereof taken by the officer, and kept in stock by him; who may take samples of such feints. Which feints shall be in like manner locked up in the warehouse, and shall be there put into one or more large casks to be provided by the distiller, and marked with the word *Feints*. And every such distiller shall, once a month at least, distill all his feints, and make up the spirits to be produced therefrom of the strength of one to six under hydrometer proof. And all such spirits shall then be locked up, or exported as other spirits for exportation are hereby directed to be. 2 G. 3. c. 5. f. 17.

Penalty for spi-
rits missing.

63. If any decrease shall be found in the *wash* brewed or made for the distilling of spirits for exportation (except such decrease as shall be made appear to the commissioners to have really and truly risen from accidents); the officer shall charge double duty for the same, calculating such wash so found to be decreased, to produce the same quantity of low wines and spirits as wash is presumed to do

when spirits are made for home consumption: And if any decrease shall appear in the stock of *spirits* made for exportation, except such as may be accounted for by certificate of the officer either as being exported for merchandize or for stores, or as being taken out for home consumption on payment of duties by consent of the commissioners, or by any allowance the commissioners shall have made for waste or for any difference which may have arisen between gage and weight, or by being sent coastwise for exportation, or by being sent with the consent of the commissioners to any other distiller in order to be rectified for exportation; the officer shall charge for all the spirits so decreased, double the duty such spirits would have been charged with if made for home consumption. 2 G. 3. c. 5. s. 18.

Delivered out for carrying coastwise for exportation.

64. When spirits made for exportation shall be delivered out of the warehouse, to be sent *coastwise* (with a certificate from the proper officer) in order for exportation; the distiller shall, on taking out the same, give bond in double the value of the spirits, and double the duties which are payable for the like spirits distilled for home consumption, that the same shall (the danger of the seas and enemies excepted) be really and truly landed in such port of this kingdom for which the same shall be entred. And such bonds shall not be discharged or delivered up, till a certificate shall be produced from the chief officer of excise of the port for which such spirits were entred, testifying the landing thereof, and describing the number of the casks or other package, and the marks, and the quantity of spirits landed; and also testifying, that the master, mate, purser or other person having charge of the vessel, had made oath before him, that the said spirits were fairly landed there, and that at the time of landing they were of the same quality as when shipped on board, and that no part of such spirits had been wilfully or fraudulently diminished, relanded, or unshipped since the same were put on board; and also, testifying, that the same were really, and truly, since their arrival there, exported from thence to foreign parts: and the condition of all such coast bonds shall be, to produce such certificate in six months from the date thereof. And such spirits so to be sent coastwise, when landed at the port for which they were entred, shall be immediately put into a proper warehouse, and there continued until the same shall be exported, and shall be secured by the person to whom they are sent, and by the said chief officer, by

two locks and keys to be provided by the person to whom the spirits were sent, one key to be kept by the said person, and the other by the officer. And all masters, commanders, and other persons belonging to any vessel carrying goods coastwise, who shall assist or connive at the fraudulent landing, embezilling, or diminishing any spirits sent coastwise, and all other persons concerned in unshipping the same, or to whose hands the same shall knowingly come, shall be subject to all penalties and forfeitures inflicted by any former act for enforcing the fair exportation of spirits to foreign parts. 2 G. 3. c. 5. s. 19.

65. When any spirits made for exportation shall be entred for *Ireland*, or his majesty's plantations in *America*, or any other parts beyond the seas in *Europe*, or any parts in *Africa* or *Asia*; the exporter thereof, when the whole quantity of spirits intended at that time to be exported shall be shipped, shall immediately give bond in double value of the spirits entred for exportation, and double the duties such spirits ought to have paid if they had been made for home consumption, that the same shall (the danger of the seas and enemies excepted) be landed at the place of destination, and until such bond shall be entred into by the exporter, the distiller from whose warehouse such spirits were sent shall be charged for such quantity of spirits so shipped for exportation, with double the duty such spirits would have been charged with if made for home consumption, and such charge shall not be discharged till such bond shall be given; and such bond shall not be discharged, till a certificate be produced from the proper officer abroad, of the due landing thereof, and of oath being made before him by the master or other person having charge of the vessel that the same had not been fraudulently diminished, relanded, or unshipped; and until oath shall also be made by the exporter at home, that to the best of his knowledge or belief, the same were disposed of at the place referred to in the certificate: and the condition of the bond shall be, to produce such certificate from *Ireland* in 6 months, from *America* in 18 months, from other parts of *Europe* in 15 months, from *Africa* in 18 months, and from *Asia* in 3 years, (danger of the seas and enemies excepted). 2 G. 3. c. 5. s. 21, 22.

66. For the encouragement of the exportation of spirits made from corn; there shall be a bounty of 3l. 12l. for every ton of spirits made from corn, which shall be exported

Bond to be given on exportation.

Bounty on exportation.

Excise. (*Spirituous Liquours.*)

ported as merchandize. And on oath made before two commissioners of excise, or justices of the peace for the place from whence such spirits are intended to be exported, that the same were drawn and made in *Great Britain* from corn under the regulations of this act, and not mixed with any other materials except what were necessary for rectifying the same, and that since the making thereof the same have been properly secured in a warehouse according to the directions of this act, and that the same are to be exported for merchandize to be spent beyond the seas; and on producing a certificate under the hand of the officer of excise for the port or place where such spirits were shipped, of the quantities so shipped, and that the same were shipped in the presence of such officer; the distiller shall be paid by the commissioners of excise, or their collector for the port or place where such spirits shall be shipped, the said bounty of 3l. 12s. a ton, and so in proportion for a greater or less quantity. 2 G. 3. c. 5. f. 20.

Provided, that no drawback shall be allowed, for any *British* made spirits, exported as merchandize, in any cask containing less than 100 gallons, or in any vessel of less burden than 100 tons. 33 G. 2. c. 9. f. 16.

—Except to *Africa* and *Newfoundland*; unto which places they may be exported as merchandize, in any vessel not being of less burden than 70 tons. 6 G. 3. c. 46. f. 9.

Exportation of
rum.

67. On the exportation of rum or spirits of the produce of the *British* plantations in *America*, as merchandize, in lieu of all former drawbacks, all the duties of custom shall be drawn back: and rum exported from the rum warehouse, before payment of the excise duties, shall be discharged of the said duties of excise. 33 G. 2. c. 28. f. 1, 2.

And on oath made before two commissioners or justices, that the rum is to be exported for merchandize to be spent beyond the seas; and on producing a certificate from the excise officer of the quantity shipped, and that a certificate was produced from the proper officer of delivery from the warehouse on bond being given for the due exportation thereof, and also upon delivery of such last mentioned certificate, the person having custody of the bond for payment of the duties shall deliver it up; or if only a part of the rum contained in the bond shall be certified to be shipped off, then such quantity shall be indorsed upon the bond. 33 G. 2. c. 28. f. 1, 2. 8 G. 3. c. 25. f. 7.

Provided,

Provided, that the said drawback shall not be allowed for any rum exported in any cask containing less than 100 gallons, or shipped on board any vessel of less burden than 100 tons (except to *Africa, Ireland, and Newfoundland*; unto which places they may be exported as merchandize, in any vessel not being of less burden than 70 tons, 6 G. 3. c. 46. f. 9.); or exported from any port not being the port of its importation. 33 G. 2. c. 28. f. 6.

And if after delivery from the said warehouse any rum shall be concealed; or not shipped within 12 hours; or the casks or package be opened, or any part taken out, or the quality be altered; all such rum shall be forfeited with the casks and package, and may be seized by any officer of excise; and the bond for exportation shall be put in suit, unless the commissioners see cause to forbear the same. f. 8.

68. All the penalties not herein otherwise directed, shall be sued for and mitigated as by the laws of the excise, or in the courts at *Westminster*; and be half to the king, and half to the informer or prosecutor. 24 G. 2. c. 40. f. 33.

69. And where the retailer is sent to the house of correction, the commissioners shall cause rewards, not exceeding 5l. to be paid to the informers. 17 G. 2. c. 17. f. 21.

70. No informations shall be brought against a distiller, for any false or misentry, or offence, but within three months after the offence committed; and notice thereof shall be given to the party in writing, or left at his dwelling house, within a week after laying the information. 12 & 13 W. c. 11. f. 17.

71. And the commissioners shall cause all foreign exciseable liquors, seized for non-payment of duty, or for being prohibited to be imported, to be publickly sold, after condemnation, to the best bidder, at such places as they shall think proper. 12 G. c. 28. f. 1.

72. And all stills, worms, and still heads, and other vessels and utensils for distilling, by whomsoever they shall be claimed, shall be liable to arrears. 7 & 8 W. c. 30. f. 13.

73. The justices within the limits of the head office of excise in *London*, shall once in every month transmit to the clerk of the peace, a certificate of all persons convicted before them for any offences against this or any former act relating to spirituuous liquors, or for licensing the retailers thereof; who shall keep and enter the same among the records of the court: which certificate shall be evidence upon any information relating to spirituuous liquors. 24 G. 2. c. 40. f. 21.

XV. Starch and hair powder.

Duty on starch
imported.

1 By the 10 *An. c. 26.* and 12 *An. st. 2. c. 9.* For all starch imported shall be paid 4d. a pound, over and above all other duties.

And all hair powder made of starch, or other powder that will serve for the same uses as starch, shall on importation pay the same duties, as foreign starch imported. 3 *G. c. 4. f. 14.*

Duty on home
starch.

2. And by the said acts, for all starch made in the kingdom, a duty shall be paid of 3d. a pound.

Officers for these
duties.

3. For the management of which duties on home starch the commissioners of the treasury shall appoint commissioners, who shall substitute inferior officers. 10 *An. c. 26. f. 9.*

Places of making
to be entered.

4. And no maker of starch shall set up or use any workhouse, storehouse, room, or other place, for making, drying, or keeping of starch, or for the converting or keeping any flour, meal, or other materials proper to be made into starch, or use any fat, trough, box, stove, utensil or other vessel for making of starch; without notice thereof being first given in writing at the next office for the said duties; on pain of 50l. 10 *An. c. 26. f. 10.*

And a summons left at the place where discovery shall be made of such offence, directed to the person prosecuted, by his right or assumed name; shall be as effectual as if delivered personally, and directed to him by his proper name. 5 *G. 3. c. 43. f. 19.*

And all flour, meal, and other materials, found in any private workhouse, or other place, and all private utensils, and vessels for making or keeping starch, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 10 *An. c. 26. f. 22.*

Officers to enter
and survey.

5. And the officer shall at all times by day or night, and if in the night in presence of a constable, be permitted on request to enter the house, workhouse, warehouse, or other place used by any maker of starch; and by gaging or weighing the starch, and gaging the boxes and other utensils, or otherwise, to take an account of the quantity; and thereof shall make return in writing to the commissioners, leaving a true copy, if demanded, under his hand, with the maker; and if he shall not leave such copy (after demand in writing, 12 *G. c. 28. f. 30.*) he shall forfeit 40s. 10 *An. c. 26. f. 14.*

Obstructing the
officer.

6. And if the maker shall obstruct such officer in the execution of his duty, he shall forfeit 20l. 10 *An. c. 26. f. 18.*

7. The

7. The maker shall use regular, square, or oblong boxes only, for boxing and draining his green starch, before it is dried in the stove, on pain of 10 l. *4 G. 2. c. 14.* How to be boxed in making.

f. 1.

8. And he shall, if within the bills, give 12 hours, elsewhere 24 hours notice in writing to the officer, of his intention to put any green starch into such boxes; on pain of 20 l. And he shall, within two hours after such notice shall have been given, begin to box it, and so continue, that the officer may have a gage of the whole; on pain of 20 l. *4 G. 2. c. 14. f. 1.* Notice of boxing.

9. And if the charge be made by gaging it before it be dried in the stove; then every box of green starch, or starch before it be dried, containing 57 inches in length, and 10 inches in breadth, and eight inches in depth, or in the whole 4560 solid inches, shall be esteemed 131 pounds averdupois, of starch dried and perfectly made. *1 G. 2. c. 2. f. 6.* Gaging in the boxes.

10. And the maker shall keep just scales and weights at the place where he makes his starch, and permit and assist the officer to make use thereof; on pain of 10 l. *10 An. c. 26. f. 16.* Scales and weights.

And by the *10 G. 3. c. 44.* if he shall use insufficient scales or weights, he shall forfeit 100 l: but not to be prosecuted both on this and the former act.

11. No maker of starch shall (on pain of 20 l.) remove any starch of which no account hath been taken by the officer, from the place where it was made; without giving to the officer within the bills 24 hours notice, and elsewhere two days notice. *10 An. c. 26. f. 19.* Removing before surveyed.

And by *4 G. 2. c. 14.* If he shall remove any starch after it is dried, out of the stove or drying place, before it has been weighed and taken account of by the officer; he shall forfeit 50 l. *f. 2.*

12. If any officer of the duties upon starch or of the customs, shall have any cause to suspect that starch is privately making in any place, or concealed; then upon oath made before any commissioner or justice residing near, setting forth the ground of his suspicion, such commissioner or justice may issue his warrant, to authorize such officer by day or night (but if in the night, in presence of a constable) to enter such suspected place, and seize and carry away the same, with the materials, as forfeited, together with the boxes and other things containing it: and unless the party make it appear that the duty has been paid, he

shall forfeit 50 l. and if any person obstruct the officer, he shall forfeit 100 l. 4 G. 2. c. 14. f. 4. 23 G. 2. c. 21. f. 34.

Officer to charge
for materials
missing.

13. The officer shall be permitted to take an account of the quantities of flour, meal, and other materials proper to be made into starch, that shall be in the possession of the maker; and if he shall miss any such materials, which he had taken an account of the last time he was there, and shall not on reasonable demand, receive satisfaction what is become thereof, he may charge the maker with such quantity of starch, as such materials so missing in his judgment would reasonably have made, not exceeding 25 pounds weight of starch, for every bushel of such ingredients mixed or unmixed. 10 An. c. 26. f. 17.

Starch unfur-
veyed to be kept
separate.

14. The maker shall keep all starch by him made and not surveyed, separate from other starch which hath been surveyed, for 24 hours after making within the bills, and for two days elsewhere, unless it shall be sooner surveyed; on pain of 5 l. 10 An. c. 26. f. 20.

Entry of starch
made.

15. The maker within the bills shall monthly, and elsewhere every six weeks, make entry in writing at the next office, of all the starch by him made, setting forth the weight, and how much was made at each time; on pain of 50 l. Which entry shall be on oath of the maker, or his chief workman, according to the best of his knowledge and belief, before such officer as shall be appointed by the commissioners within the bills, and elsewhere before the collector and supervisor. 10 An. c. 26. f. 11.

But he shall not be obliged to go further to make entry, than to the next market town, f. 12.

Payment of the
duties.

16. The maker within the bills, shall within four weeks, and elsewhere within six weeks after entry, clear off the duties; on pain of double duty; And no maker, after default in payment, shall sell or deliver out any starch until he hath cleared off the duty; on pain of double value. 10 An. c. 26. f. 13.

Carrying it coast-
wise.

17. Cocquets granted for shipping starch, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocquet, it shall be forfeited and seized, together with the package. 23 G. 2. c. 21. f. 29.

Importation and
exportation.

18. No starch shall be *imported* otherwise than in some package, containing at least 224 pounds of neat starch, and

and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit 50 l. 23 G. 2. c. 21. f. 27.

But on information brought against such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the starch was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner in payment of the forfeiture. 26 G. 2. c. 32. f. 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all starch forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 G. 2. c. 21. f. 28.

Starch that hath paid the duties may be exported; and the duties shall be drawn back. 10 An. c. 26. f. 25, 26, 27.

But no drawback shall be allowed on the exportation of any foreign starch imported. 23 G. 2. c. 21. f. 36.

And the officers of excise or customs may seize any starch or hair powder, with the horses and package, where they have good reason to suspect that it hath been privately made, or imported without payment of duty, or relanded after drawback; and shall in ten days exhibit an information before three commissioners of excise, or two justices near where the seizure is made; and if the party doth not make it appear that the duty hath been paid, it shall be forfeited, together with the horses and package; and the offender shall likewise forfeit 5 l. for every hundred weight. 4 G. 2. c. 14. f. 3.

And by the 23 G. 2. c. 21. it is enacted, that the said officers may seize any starch, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported, or relanded after drawback; and if the party, at the hearing of the information, shall not make it appear that the duty hath been paid or secured, he shall forfeit 5 l. for every 100 pounds weight, and also the goods and package shall be forfeited. f. 30.

And if any foreign starch shall be unshipped, with intention to be laid on land before entry and payment of the duties, or shall be landed again after shipping for exportation on debenture; the same, together with the package, vessels, boats, horses, and other carriages, used in land-
ing

ing or conveying the same, shall be forfeited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized, shall forfeit 5 l. for every hundred weight. 23 G. 2. c. 21. s. 31.

And if any person shall knowingly harbour or conceal any starch unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50 l. for every hundred weight, together with the goods and package. 23 G. 2. c. 21. s. 32.

And where any such starch shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation, at the next market town, on the market day, next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof: And the judgment thereon shall not be liable to appeal, nor be removed by certiorari. 23 G. 2. c. 21. s. 33.

Making of hair powder.

19. No perfumer, peruke maker, barber, or dealer in hair powder, shall make, use, or offer to sale, any powder made of or mixed with alabaster, talke, plaister of paris, whiting, lime, or other thing of the like nature (sweet scents only excepted); on pain of forfeiting the same, and 50 l. 12 An. st. 2. c. 9. s. 20.

And by the 4 G. 2. c. 14. If any maker of hair powder, or other such person, shall mix any powder of alabaster, plaister of paris, talke, chalk, whiting, lime, or any other material (rice first made into starch, and sweet scents only excepted) with any starch or powder of starch to be made use of for making of hair powder, and shall make any hair powder with any the said materials, or any other material except starch or powder of starch, or of rice first made into starch, and shall use, sell, or offer to sell any hair powder so mixed or made; he shall forfeit the same, and 20 l. s. 5.

Places of making hair powder to be entered.

20. Every maker of hair powder shall make entry in writing at the next excise office of his place of abode, and of his workhouse or other place made use of for making hair powder; on pain of 20 l. 4 G. 2. c. 14. s. 6.

21. And

21. And the officer, in the day time, on his request, may enter places used for making hair powder, and the shops of perfumers, peruke makers, barbers, and other sellers or dealers in hair powder, and examine the same, and carry away samples, paying a reasonable price for the same. 4 G. 2. c. 14. f. 7. Officer to enter the same and survey.

And if such starch maker or dealer shall not on request suffer him to enter, and examine, and take samples (on offering to pay the common price); he shall forfeit 20 l. *id.* f. 9.

22. And if any starch maker, or dealer in hair powder, shall have in his possession, for making, mixing, or counterfeiting hair powder, any alabaster, plaister of paris, talke, chalk, whiting, lime, or other material, besides starch, or powder of starch, or of rice first made into starch; he shall forfeit the same, and 10 l. 4 G. 2. c. 14. f. 8. Person having in his possession materials for adulterating hair powder.

23. All the said forfeitures shall be sued for, levied and mitigated, as by the laws of excise, or in the courts at *Westminster*; and be distributed half to the king, and half (and on the 10 An. c. 26. half with full costs) to the prosecutor. 10 An. c. 26. f. 29. 24 G. 2. c. 40. f. 33. Power of the justices.

24. And where any starch shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not; the proof shall lie on the claimer, and not on the officer. 23 G. 2. c. 21. f. 34. Proof to lie on the claimer.

25. And if the party is not satisfied with any judgment of the justices, on the act of 23 G. 2. c. 21. above-mentioned, he may appeal to the next quarter sessions (except in the case before mentioned, where no person shall claim the goods seized.) f. 36. Appeal.

26. And the mitigation on the said act of 23 G. 2. shall not reduce the penalty to less than a fourth part, over and above the charges. f. 37. Mitigation.

27. And all starch, materials, and utensils, in custody of the maker, or of any person to his use, shall be liable to all arrears of the duty, and penalties; and such proceedings may be had thereupon, as if the debtor or offender were the lawful owner. 10 An. c. 26. f. 23. Utensils liable.

XVI. Wire.

1. No foreign imbroidery, or gold or silver brocade, thread, lace, fringe, or work made thereof, or of copper, brass, or other inferior metal, or gold or silver wire, or plate Importing of wire.

- plate shall be imported. 15 G. 2. c. 20. f. 7. 22 G. 2. c. 36. f. 1.
- Duty on home wire. 2. For all gilt wire made in *Great Britain* shall be paid a duty of 8 d. an ounce; for silver wire 6 d. an ounce, troy weight. 10 An. c. 26. f. 46.
- Officers for these duties. 3. And the commissioners of the treasury shall appoint commissioners for these duties, who shall substitute inferior officers. 10 An. c. 26. f. 48.
- Places of making to be entered. 4. And every person who shall draw any gold or silver into such wire as is commonly called big wire, shall first give notice in writing at the next office for the said duties, of his name and place of abode, and where he intends to work; on pain of 20 l. and no refiner, wire-drawer, or other person, shall draw any gold or silver into such big wire, at any place other than some common bar house to be approved of by the commissioners; on pain of 20 l. 10 An. c. 26. f. 49.
- And all gilt and silver wire, and bars for making it, which shall be found in any private workhouse, and all private utensils for barring or drawing it, of which notice hath not been given, shall be forfeited and seized, or the value thereof recovered. 10 An. c. 26. f. 59.
- Officer to enter and survey. 5. And the officer shall at all times, by day or night, and if in the night in presence of a constable be permitted on his request to enter the barhouse, workhouse, or other place used for making of such wire, and take an account of the weight, and thereof make return in writing to the commissioners, or to whom they shall appoint, leaving a copy thereof, if demanded, with the maker; and if he shall refuse to leave such copy (after demand in writing, 12 G. c. 28. f. 30.) he shall forfeit 40 s. 10 An. c. 26. f. 52.
- Obstructing the officer. 6. And if any such maker shall obstruct the officer, in the execution of his office, he shall forfeit 20 l. 10 An. c. 26. f. 55.
- Scales and weights. 7. And the maker shall keep just weights and scales at the place of making the wire, and permit and assist the officer to weigh; on pain of 10 l. 10 An. c. 26. f. 54.
- And by the 10 G. 3. c. 44. if he shall use false or insufficient scales or weights, he shall forfeit 100 l. but not to be prosecuted both on this and the former act.
- Ingots to be weighed. 8. Every ingot or bar of silver, designed for gilt wire, shall be weighed in the presence of the excise officer, who attends the forge where they are made, before they be covered with gold; and shall be weighed in presence of, and marked by the said officer, after the gold is laid on: and

and on refusal to admit the officer, the refiner or maker shall forfeit 20l. half to the king, and half to him that shall sue. 15 G. 2. c. 20. f. 8, 9.

9. If the officer's charge be made, by taking the weight of the gold and silver in big wire at the bar house, an allowance of one fifth part shall be made, in consideration of the waste, in reducing the same to small wire. 10 An. c. 26. f. 53. Allowance for waite.

10. No wire drawer shall (on pain of 40l.) remove any gilt or silver wire, of which no account hath been taken, from the bar house or place of making, without giving to the officer 24 hours notice. 10 An. c. 26. f. 56. Removing before surveyed.

11. Wire not surveyed shall be kept separate from that which hath been surveyed, for 24 hours after making, unless it shall be sooner surveyed; on pain of 10l. 10 An. c. 26. f. 57. Wire unsurveyed to be kept separate.

12. If the maker, or he for whom it is made, shall conceal any wire, or bars of silver prepared for making it; he shall forfeit 20l. 10 An. c. 26. f. 58. Concealing.

13. The maker shall once in every month make entry in writing at the next office, of all the wire by him made, setting forth the weight, and kinds, and how much was made in each week; on pain of 100l. Which entry shall be made on the oath of the maker, or his chief workman, to the best of his knowledge and belief, to be administered by the officer. 10 An. c. 26. f. 50. Entry of wire made.

14. And the duty shall be cleared off in six weeks after entry, on pain of double duty. 10 An. c. 26. f. 51. Payment of the duty.

15. If any person shall export any gold or silver thread, or lace or fringe made of plate wire, spun upon silk, he shall have a drawback after the rate of 5s. a pound averdu- pois, of such silver thread, lace, or fringe, and of 6s. 8d. a pound of such gold thread, lace, or fringe. 10 An. c. 26. f. 62. Exportation.

16. All the powers of the excise laws shall be in force for managing these duties: and the penalties and forfeitures (not herein otherwise directed) shall be sued for, levied, and mitigated, as by the laws of excise, or in the courts at *Westminster*; and be employed, half to the use of the king, and half to him that shall inform or sue. 10 An. c. 26. f. 64. 24 G. 2. c. 40. f. 33. Power of the justices.

17. And all such wire, materials, and utensils, in custody of any maker, or other to his use, shall be liable to the duties and penalties; and such proceedings may be had there- Utensils liable.

thereupon, as if such debtor or offender were the lawful owner. 10 An. c. 26. s. 60.

For regulations concerning the true making of gilt and silver wire (which do not belong to this place) see the act of 15 G. 2. c. 20.

And for prohibiting the selling or working up of foreign gold or silver lace or thread, see the 22 G. 2. c. 36.

Information against an alehousekeeper for arrears.

Westmorland. **B**E it remembred, that this ——— day of ——— in the ——— year of the reign of his majesty king George the third that now is, at ——— in the said county, A. I. gentleman, in his proper person, as well for his said majesty, as for himself, exhibiteth to us A. P. and J. P. esquires, two of his said majesty's justices of the peace for the said county, residing near to the place where the forfeiture herein after mentioned was made, a complaint and information, and thereby informeth us, that at several times between the ——— day of ——— and the ——— day of ——— both now last past, at ——— aforesaid in the said county, one A. O. at a common alehouse then and there belonging to and used by him, did brew the several and respective quantities of beer and ale herein after mentioned; that is to say, 30 barrels of strong beer and of strong ale, each above 6 s. the barrel; and sixty barrels of small beer not exceeding 6 s. the barrel; and that the said A. O. at and during the respective time and times of brewing the said beer and ale, and of every part thereof, was and yet is a common alehousekeeper; and that there did thereby accrue and become due to his said majesty from the said A. O. for the said beer and ale so by him brewed as aforesaid, certain rates, duties, and sums of money, amounting in the whole to the sum of ——— of lawful money of Great Britain; which said rates, duties, and sums of money so accrued, or any part thereof, the said A. O. hath not paid or cleared off, to or for the use of his said majesty, within a month next after he, according to the statute in that behalf made, did make, or ought to have made his entry or entries of the said beer and ale so by him there brewed as aforesaid, or of any part thereof, or at any time since; but the same yet remain wholly due and unpaid, contrary to the form of the statute in such case made and provided; whereby the said A. O. hath forfeited double the value of the said rates, duties, and sums

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sums of money remaining unpaid, as aforesaid; that is to say,——of like money; and thereupon the said A. I. who as well for his said majesty, as for himself exhibiteth this information, prays the judgment of us the said justices in the premisses, and that he may have one moiety of the said forfeiture, according to the form of the statute in such case made; and that the said A. O. may be summoned to answer the premisses before us the said justices.

Summons on the foregoing information.

To Mr. A. O. alehousekeeper.

Westmorland. **W**E. J. P. and K. P. esquires, two of his majesty's justices of the peace for the said county of——do hereby give you notice that A. I. gentleman, hath exhibited before us an information against you for the sum of——being double the value of certain duties of excise of beer and ale by you brewed, the single duties whereof (as he alledgeth) you ought long since to have paid, but have neglected so to do: You are therefore hereby required to appear before us at the house of——at the sign of the——in——in the said county, on the——day of——now next ensuing, at the hour of——in the forenoon of the said day, then and there to answer to the said information. And if you shall neglect so to do, we shall proceed as if you were personally present. And we do further authorize and require Mr. A. E. officer of excise, or any other officer of excise, to serve this our summons, and to attend us at the time and place last mentioned, then and there to make a return thereof to us the said justices. Given under our hands and seals at——in the said county, the——day of——in the——year of the reign of his said majesty king George the third.

Note; the officer who shall serve the summons, ought not to be the informer or prosecutor, for this obvious reason, because that he, being intitled to a share of the forfeiture, is not a proper witness to prove such service; for that would be admitting him to swear for himself in his own cause, which is abhorrent from the nature of our laws.

Information against a malster for concealing a quantity of malt.

Westmorland. **B**E it remembred, that this——day of ——in the——year of the reign of his majesty king George the third, at——in the said county, A. I. gentleman, in his proper person, as well for his said majesty as for himself, exhibiteth to us J. P. and K. P. esquires, two of his said majesty's justices of the peace for the said county, residing near to the place where the offence herein after mentioned was committed, as is alledged, a complaint or information, and thereby informeth us, that A. O. of——in the said county, during three months now last past and longer, having been and continued to be, and yet being a maltster and maker of malt, and not having compounded for the duties of the malt herein after mentioned, he the said A. O. within three months now last past, at——in the said county did fraudulently hide, conceal, and convey away malt by him made, that is to say, 12 bushels of malt by him so made as aforesaid, from the sight and view of one A. E. being at the said time of the said hiding and concealing thereof, and long before, and ever since, the gager appointed to take an account of the same, and then and there endeavouring to take such account; which hiding, concealing, and conveying away as aforesaid, are contrary to the form of the statute in such case made and provided: Whereby he the said A. O. for every bushel of the said malt so hid and concealed, hath forfeited 10s. of lawful money of Great Britain, amounting in the whole to 6l. of like money. And thereupon the said A. I. who as well for his said majesty as for himself exhibiteth this information, prays the judgment of us the said justices in the premisses, and that he may have one moiety of the said forfeiture, according to the form of the statute in such case made; and that the said A. O. may be summoned to answer the said premisses, before us the said justices.

Summons on the foregoing information.

Westmorland. { To Mr. A. O. maltster.

WE J. P. and K. P. esquires, two of his majesty's justices of the peace for the county aforesaid, do hereby give you notice, that A. I. gentleman, hath exhibited before
us

us an information against you for the penalty of 6l. by you forfeited for hiding, concealing, and conveying away 12 bushels of malt, from the sight and view of the gager appointed to take an account of the same, against the form of the statute in such case made: You are therefore hereby required to appear before us, at the house of——at the sign of——in——in the said county, on the——day of——now next ensuing, at the hour of——in the forenoon of the same day, then and there to answer to the said information. And if you neglect so to do, we shall proceed as if you were personally present. And we do further authorize and require Mr. A. E. officer of excise, or any other officer of excise, to serve this our summons, and to attend us at the time and place last mentioned, then and there to make a return thereof to us the said justices. Given under our hands and seals at——in the said county, this——day of——in the——year of the reign of his said majesty king George the third.

Summons to give evidence.

Westmorland. { To A. W. of——yeoman.

WHEREAS we whose hands and seals are hereunto set, being two of his majesty's justices of the peace in and for the said county, have received information, that A. O. of——in the said county, alehousekeeper, did on the——day of——now last past, brew and sell ale and beer, and hath not made entry thereof, according to the statute in that behalf made; and that you the said A. W. are a material witness to be examined concerning the same: These are therefore to require you to appear before us at the house of——at the sign of the——in the said county, on the——day of——now next ensuing, at the hour of——in the forenoon of the same day, to testify your knowledge concerning the premises. Herein fail you not. Given under our hands and seals at——in the said county, the——day of——in the——year of the reign of his said majesty king George the third.

Judgment against the defendant.

AT the time and place appointed by our summons on the information within written; that is to say, this——day of——in the——year of the reign of our
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Excise.

foreign lord king George the third, at——in the county of——within mentioned; the within named defendant A. O. appeareth, and pleadeth that he is not guilty of the offence within mentioned; but upon a due and full hearing of the proofs made in and concerning the premisses, we do convict him thereof: [Or——sufficient proof being made before us, that the within named defendant A. O. hath had due notice of the within written information, and that he was duly summoned to appear before us here this day; and he, in contempt of the said summons, neglecting now to appear and making default therein; and the fact and offence in the within written information being now fully proved before us, we do convict him thereof:] It is therefore now here considered and adjudged by us the said justices, that the said defendant hath forfeited the within mentioned sum of 50*l.* (which we mitigate and lessen to the sum of 7*l.*) to be distributed as the law directs. Given under our hands and seals, at——aforesaid, this——day of——in the——year of the reign of our said sovereign lord king George the third.

Warrant of distress.

Westmorland. { To A. E. and B. E. officers of excise,
and to either of them, and to such other
person and persons as they or either of
them shall take to his or their assistance.

WE whose hands and seals are hereunto set, two of his majesty's justices of the peace for the said county of——do in his said majesty's name, authorize and command you and every of you, that upon the brewing vessels and utensils for brewing used by A. O. of——in the said county, innkeeper, in the brewhouse and place where he usually brews, at——aforesaid, and upon the goods and chattles of the said A. O. you or any of you do levy the sum of 20*l.* of lawful money of Great Britain, by us mitigated and lessened from the sum of 50*l.* of like money recovered against him by A. I. gentleman, who prosecuted as well for our sovereign lord the king, as for himself, for a certain offence committed by the said A. O. against the laws and statutes of excise, whereof he the said A. O. is convicted before us; And for the levying thereof you are to seize, take and carry away the said brewing vessels and utensils for brewing, and also the goods and chattles aforesaid; and if in [eight] days next after such seizure, the said sum of 20*l.* together with the reasonable charges of taking and keeping the said vessels

vessels and utensils, goods and chattles, shall not be paid, then, and in such case (after the expiration of the said ——— days) you are to make sale thereof or so much thereof as shall be sufficient for the purposes herein specified; which said sum of 20 l. when so levied as aforesaid, you are forthwith to pay to the collector of excise for the collection called ——— collection, for the time being; to be by him distributed and answered, according to the statute in such case made and provided: and after levying thereof, the overplus which shall remain of the said brewing vessels and utensils for brewing, and of the said goods and chattels, and of the money arising by such sale, you are to return unto the said A. O. upon demand, the reasonable charges of taking, keeping, and selling the said vessels and utensils, goods and chattels, being out of the said overplus money first deducted.

And all constables and other peace officers of the said county are hereby required to be aiding and assisting to you in the due execution hereof. But in case there cannot be found sufficient to raise the sum last mentioned, then and in such case, you are by a return to this our warrant, forthwith to certify the same, to us the said justices. Given under our hands and seals at ——— in the said county, this ——— day of ——— in the ——— year of his said majesty's reign, and in the year of our lord ———

Return of the want of distress.

Westmorland. **I** A. E. one of the officers of his majesty's duties of excise, do hereby certify to J. P. and K. P. esquires, two of his said majesty's justices of the peace for the said county, that by virtue of a warrant from the said justices to levy the sum of 20 l. upon the brewing vessels and utensils for brewing used by A. O. in his usual place of brewing, and upon his goods and chattels, I have made diligent search for such vessels, utensils, goods, and chattels; and that I can find none such; and that I do not know, nor can find, that the said A. O. hath any goods or chattels whatsoever. Witness my hand hereunto set, at ——— in the said county, this ——— day of ——— in the year of our lord ———

Warrant of commitment.

Westmorland.

To A. E. and B. E. officers of excise,
and to either of them, and to such per-
son or persons as they or either of them
shall take to their assistance: And to the
gaoler or keeper of such prison to whom
these presents shall come.

WHEREAS we whose hands and seals are hereunto set,
two of his majesty's justices of the peace for the said
county of—by our warrant under our hands and seals,
bearing date the—day of—now instant, did re-
quire and command you the said A. E. and B. E. or either of
you, to levy the sum of 20 l. therein mentioned on the brewing
vessels and utensils for brewing, used by A. O. of—in the
said county, innkeeper, and upon the goods and chattels of the
said A. O. And whereas you the said A. E. and B. E. by a
return and certificate under your hands, bearing date the—
day of—now instant, have certified to us, that having made
diligent search for such brewing vessels and utensils for brewing,
and for such goods and chattels, you cannot find any whereon to
levy the said 20 l. or any part thereof, and that no such vessels,
utensils, goods or chattels can be found: We therefore the said
justices do in his majesty's name hereby authorize, require and
command you, every, or any of you, to take and arrest the body
of him the said A. O. and forthwith to carry him to the gaol or
prison of and for the county or place where you shall so take and
arrest him; and him, together with a duplicate of this our
warrant, there to deliver into the custody of the gaoler or keeper
of the said gaol or prison of and for the said county or place,
there to remain in safe custody until he shall satisfy and pay the
said sum of 20 l. of lawful money of Great Britain, by us miti-
gated and lessened from the sum of 50 l. of like money, by us the
said justices adjudged against him, upon an information exhibited
against him before us by A. I. gentleman, as well on the behalf
of his said majesty, as of himself, for a certain offence com-
mitted by the said A. O. against the laws and statutes of excise,
whereof he stands convicted before us the said justices. And all
constables, and other his majesty's officers, are hereby authorized
and required, to be aiding and assisting to you in the due execu-
tion hereof. And the gaoler and gaolers, keeper and keepers of
such prison or gaol to which you shall so carry the body of the
said A. O. is and are hereby authorized and required, to receive

into his or their custody the body of the said A. O. and the same to keep in safe custody until he shall satisfy and pay the said sum of 20 l. before mentioned. And for your, any, or either of your doing as is before respectively directed, this shall be to you, any, or either of you respectively, a sufficient warrant and authority. Given under our hands and seals at— in the said county, this — day of — in the — year of the reign of his said majesty, and in the year of our lord —

More precedents it is not necessary to add, since the officers of excise are generally well furnished with printed forms drawn by good advice.

Note; These statutes abovementioned, relating to this title are but temporary, and have their continuance as follows,

8 G. c. 18. Spirituous liquors. By the 7 G. 3. c. 35. to Sep. 29. 1774, and from thence to the end of the then next session of parliament.

5 G. 2. c. 24. Coffee. By the 6 G. 3. c. 44. to June 24. 1774, and from thence to the end of the then next session of parliament.

15 G. 2. c. 25. Rum. By the 11 G. 3. c. 51. to Sep. 29. 1778, &c.

19 G. 2. c. 34. Outlawed smugglers. By the 11 G. 3. c. 51. to Sep. 29. 1778, &c.

Execution.

1. **W**HERE a person attainted hath been at large after his attainder, and afterwards is brought into court and demanded why execution should not be awarded against him; if he deny that he is the same person, it shall be immediately tried by a jury returned for that purpose. 2 *Haw.* 463.

2. The court may command execution to be done, without any writ. 2. *Haw.* 463.

3. In fixed and stated judgments, the law makes no distinction between a peer and a commoner, or between a common and ordinary case, and one attended with extraordinary circumstances; for which reason it was adjudged in *Pelton's* case, who murdered the duke of Buckingham, that

Execution.

that the court could not order his hand to be cut off, nor make it part of the sentence that his body should be hanged, in chains, but that the body after execution being at the king's disposal, might be hanged in chains, or otherwise ordered as the king should think fit. 2 *Haw.* 443.

4. But the king may pardon part of the judgment; as where the judgment is hanging, beheading, imbowelling, and the like, the king may pardon all but the beheading, whereby the judgment is not altered, but part of it remitted. 2 *H. H.* 412.

5. It is clear, that if a man condemned to be hanged, come to life after he be hanged, he ought to be hanged again; for the judgment was not executed till he was dead. 2 *Haw.* 463.

Exigent. See *Process.*

Extortion.

IT is said, that extortion, in a large sense, signifies any oppression under colour of right; but that, in a strict sense, it signifies the taking of money by any officer, by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due. 1 *Haw.* 170.

And by the statute of the 3 *Ed.* 1. c. 26. (which is only in affirmance of the common law). *No sheriff, nor other the king's officer, shall take any reward to do his office, but shall be paid of that which they take of the king; and he that so doth, shall yield twice as much, and shall be punished at the king's pleasure.*

No sheriff nor other the king's officer.] Under these words, the law beginning with the *sheriffs*, are understood escheators, coroners, bailiffs, gaolers, and other inferior officers of the king, whose offices were instituted before the making of this act, which do any way concern the administration or execution of justice, or the common good of the subject, or for the king's service. 2 *Inst.* 209.

Also the justices of the peace, whose office was instituted after this act, are bound by their oath of office, to take nothing for their office of justice of the peace to be done,

done, but of the king, and fees accustomed, and costs limited by statute.

And generally, no publick officer shall take any other fees or rewards, for doing any thing relating to his office, than some statute in force gives him, or else as hath been antiently and accustomedly taken; and if he do otherwise, he is guilty of extortion. *Dalt. c. 41.*

Shall take any reward] Therefore by this statute, they can at this day take no more for doing their office, than hath been since allowed to them by authority of parliament. *2 Inst. 210.*

And all prescriptions which have been contrary to this statute, and to the common law in assurance of which it is made, have been always holden to be void. *1 Hawk. 170.*

And it has been resolved, that a promise to pay them money for the doing of a thing, which the law will not suffer them to take any thing for, is merely void. *1 Hawk. 171.*

To do his office] It is not said, that he shall take no reward generally, but no reward to do his office: Thus the fee of 20 d. called bar fee, time out of mind taken by the sheriff of every prisoner that is acquitted, is not against this statute; for it is not taken for doing his office. *2. Inst. 210.*

But there seems to be no necessity for this distinction, for it cannot be intended to be the meaning of the statute to restrain the courts of justice, in whose integrity the law always reposes the highest confidence, from allowing reasonable fees for the labour and attendance of their officers; for the chief danger of oppression is from officers being left at their liberty to set their own rates on their labour, and make their own demands; but there cannot be so much fear of these abuses, while they are restrained to known and stated fees, settled by the discretion of the courts, which will not suffer them to be exceeded, without a proper resentment. *1 Hawk. 171.*

But in the ecclesiastical court, a person was libelled against for fees, and upon motion a prohibition was granted, for that it was holden that no court hath a power to establish fees: the judge of a court may think them reasonable, but that is not binding; but if on a *quantum meruit* a jury think them reasonable, then they become established fees. *1 Salk. 333.*

Extortion.

The fees in sessions, for traversing, trying, or discharging indictments, discharging recognizances, and the like, do vary according to the different customs in different places. *Dalt. c. 41.*

Shall yield twice as much] At the common law this offence is severely punishable at the king's suit, by fine and imprisonment, and also by a removal from the office in the execution whereof it was committed. And this statute doth add a greater penalty than the common law did give; for hereby the plaintiff shall recover his double damages. *2 Inst. 210. 1 Haw. 171.*

And by the *31 El. c. 5.* Actions for extortion may be laid in any county.

At the king's pleasure] That is, by the king's justices, before whom the cause depends. *2 Inst. 210.*

Indictment for extortion in a gaoler.

THE jurors for our lord the king, upon their oath present, that A. O. late of——in the said county, yeoman, on the——day of——in the——year of the reign of——was taken upon suspicion of having committed a certain felony, by——constable of——in the said county, by virtue of a warrant directed to the said——under the hand and seal of Sir William Daltton, knight, then and yet one of the justices of our sovereign lord the king, assigned to keep the peace in the said county, and was on the same day and year committed by him the said Sir William Daltton, to A. G. keeper of the gaol of our said sovereign lord the king at——in the said county, under the custody of him the said A. G. to be safely kept, upon suspicion of the felony aforesaid, and the said A. O. was detained in that prison under the custody of the said A. G. from the time that he was committed to the said prison for one month from thence next ensuing, upon suspicion of the said felony; nevertheless the said A. G. in no wise regarding the statute in that case made, and the penalty therein contained, did on the——day of——at——aforesaid, in the said county, demand and receive——pounds of lawful money of Great Britain of and from the said A. O. for ease and favour in the said gaol for the said time, in contempt of our said sovereign lord the king, and against the form of the statute aforesaid, and against the peace of our said sovereign lord the king, his crown and dignity.

Indictment

Indictment for extortion of a bailiff.

THE jurors for our lord the king upon their oath present, that A. B. late of ——— in the said county yeoman, being bailiff of the hundred of ——— in the said county, on the ——— day of ——— in the ——— year of the reign of ——— at ——— in the said county, by pretext and colour of his said office, did unjustly and by extortion take and extort 5 s. of one A. I. of ——— in the said county, yeoman, one of the freeholders qualified to serve upon juries in the said county to excuse the said A. I. from attending or appearing at the assizes that were then next to be holden in and for the said county, when in fact the said A. I. was not returned by the sheriff of the said county in any panel of jurors, and also when indeed no such sum of money was due to the said A. B. for his fee for excusing the attendance or appearance of the said A. I. at the assizes aforesaid, to the evil example of other offenders, to the great damage of him the said A. I. and against the peace of our said lord the king, his crown and dignity.

False tokens. See Cheat.

Fast days.

BY the 2 & 3 Ed. 6. c. 19. for the encouragement of the fisheries, and the increase of cattle; and the 5 El. c. 5. intitled, an act touching political constitutions for the maintenance of the navy; and by the 35 El. c. 7. it is enacted as follows.

No person shall eat any manner of flesh on any *Friday* or *Saturday*, or the embring days, or in *Lent*, nor on any other day commonly reputed a fish day; on pain of forfeiting 20 s. or being imprisoned one month.

And every person in whose house any flesh shall be eaten on fish days, and not disclosing the same to a publick officer having authority to punish the same; shall forfeit 13 s. 4 d.

Which said forfeitures shall be, one third to the king, one third to the informer, and one third to the common use of the parish where the offence shall be committed; to be levied by the churchwardens after conviction.

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Prosecution to be at the assizes or sessions, in three months after the offence committed.

But nothing herein shall extend to any person having the king's licence; or being in great age, and weakness thereby, or sick, or notably hurt; or a woman with child, or lying in child-bed, for eating of such one kind of flesh as she shall have great lust unto; or in prison; nor to the king's lieutenant, deputy, or captain in his armies, but the same may eat, or license his soldiers to eat flesh for lack of other victual; nor to persons licensed by the archbishop of *Canterbury*.

And such licences shall be on condition, that the person licensed shall within six days after *Candlemas*, pay to the poor box where he dwells, if he be a lord 26s. 8d. a knight 13s. 4d. and all others 6s. 8d.

But sick persons may be licensed by the bishop of the diocese, or by the parson, vicar, or curate of the parish, or (if there be none, or he be wilful) of the next parish; and if the sickness continues above eight days, the licence shall be registred in the church book, with the knowledge of a churchwarden; and the curate shall have 4d. for entry; and the same to endure no longer than such sickness.

And no licence shall extend to the eating any beef at any time of the year, nor veal from *Sep. 29.* to *May 1.* in any year.

And persons licensed (except for sickness) shall for every dish of flesh at their table, have one dish of sea fish.

Fees. See *Extortion*.

Felo de se. See *Homicide*.

Felony, Misprision of Felony, and Theftbote.

I. Felony.

FELONY is supposed by some to come from the Saxon *fell*, which signifieth fierce or cruel; of which the verb *fell* signifieth to throw down or demolish; and the substantive of that name is used to signify a mountain rough

rough and uncultivated. But the same word, with a little variation, runneth through most of the *European* languages, and signifieth more generally an offence at large; and the Saxon word *fællan* signifieth to offend, and *fælnisse* an offence or *failure*; and altho' *felony*, as it is now become a technical term, signifieth in a more restrained sense an offence of an high nature, yet it is not limited to *capital* offences only, but still retaineth somewhat of this larger acceptation; for petit larceny is felony, altho' it is not capital.

According to Sir *Henry Spelman's* observation, it signifies such an offence, for which, during the feudal institution, a man should lose or forfeit his estate; as being derived of two northern words, *fee*, which signifies the fief, feud, or beneficiary estate, and *lon*, which signifies price or value.

It would swell this title near to the bigness of half the book, to set down every thing which may be comprehended under this word *felony*: therefore it is necessary to refer the consideration of the several particular kinds of felonies to their respective titles; as for instance, *Homicide*, *Robbery*, *Burglary*, *Rape*, *Coin*, *Forgery*, and many others; and especially the law relating to stolen goods of all kinds belongs to title *Larceny*.

The method of bringing a felon to justice from the first commission of the felony, to his condemnation and execution, is treated of under the several titles of *Hue and cry*, *Arrest*, *Examination*, *Bail*, *Commitment*, *Gaol*, *Arraignment*, *Appeal*, *Indictment*, *Mute*, *Confession*, *Jurors*, *Evidence*, *Clergy*, *Judgment*, *Attainder*, *Forfeiture*, *Transportation*, *Execution*. And the course and whole procedure of trying an offender, is treated of under title *Sessions*.

So that there is nothing left for this place, but to taken notice of one circumstance which is common to all felonies in general, and that is, concerning the charges of prosecution.

By the 3 *J. c. 10*. The felon shall pay the charges of his carrying to gaol, if able; to be levied by distress by warrant of one justice.

And by the statute of the 27 *G. 2. c. 3*. if he is not able, the same shall be paid, by order of such justice, by the treasurer out of the county rate; and in *Middlesex* by the overseers of the poor where the party was apprehended.

And by the 25 *G. 2. c. 36*. the court, before whom any person hath been tried and convicted of any grand or petit larceny, or other felony, may at the prayer of the
pro-

Felony, &c.

prosecutor, and on consideration of his circumstances, order the treasurer of the county in which the offence shall have been committed, to pay him such sum as they shall judge reasonable, not exceeding the expences he was put to in carrying on the prosecution, with a reasonable allowance for his time and trouble; and the clerk of assize, or of the peace, shall forthwith make out such order, and deliver the same to the prosecutor, on paying 1s. and the treasurer shall pay the same on sight, and be allowed the same in his accounts.

And by the aforesaid act of the 27 G. 2. c. 3. When any poor person shall appear on recognizance to give evidence, the court may order the treasurer to pay him such sum as they shall think reasonable, for his time, trouble, and expences, (whether the person hath been convicted or not); which order the proper officer shall make out for the fee of 6d. Except in *Middlesex*, where the same shall be paid by the overseers of the poor where the person was apprehended.

II. Misprision of felony.

Misprision of felony (from the *French* word *mespris*, a neglect or contempt, 3 *Inst.* 36.) is the concealing of a felony which a man knows, but never consented to: for if he consented, he is either a principal or accessory in the felony, and consequently guilty of misprision of felony and more. 1 *H. H.* 374.

For it is said, that every felony includes misprision of felony, and may be proceeded against as a misprision only, if the king pleases. 1 *Haw.* 125.

The punishment of misprision of felony in a common person, is fine and imprisonment; in an officer, as sheriff or bailiff of liberties, imprisonment for a year, and ransom at the king's pleasure, by the statute of 3 *Ed.* 1. c. 9.

If any person will save himself from the crime of misprision, he must discover the offence to a magistrate with all speed that he can. 3 *Inst.* 140.

Misprision, in a larger sense, is used to signify every considerable misdemeanor, which hath not a certain name given to it in the law.

III. Theftbote.

Theftbote (from the *Saxon* words *theft*, and *bote*, boot or amends) is, where one not only knows of a felony but takes

takes his goods again, or other amends not to prosecute.

1 *Haw.* 125.

But the bare taking of one's own goods again, which have been stolen, is no offence, unless some favour be shewn to the thief. 1 *Haw.* 125.

This offence is very nearly allied to felony, and is said to have been anciently punished as such; but at this day it is punishable only with ransom and imprisonment, unless it were accompanied with some degree of maintenance given to the felon, which makes the party an accessory after the fact. 1 *Haw.* 125.

Warrant for felony.

Westmorland. { To the constable of———

FORASMUCH as A. I. of——— in the county of
——— yeoman, hath this day made information and
complaint upon oath, before me——— one of his majesty's
justices of the peace for the said county, that this present day
divers goods of him the said A. I. to wit,——— have felo-
niously been stolen, taken, and carried away from the house
of him the said A. I. at——— aforesaid, in the county
aforesaid, and that he hath just cause to suspect, and doth
suspect that A. O. late of——— yeoman, feloniously did
steal, take and carry away the same [Or otherwise as the
case shall be :] These are therefore to command you forthwith
to apprehend him the said A. O. and to bring him before me
to answer unto the said information and complaint, and to be
further dealt withal according to law. Herein fail you not,
Given under my hand and seal the——— day of——— in the
year———.

The forms of indictments for stolen goods of various kinds, are inserted under the title *Larceny*.

Feme covert. See *Wife*.

Fern. Burning of it in forests. See *Burning*.

Fire. See *Burning*.

Fire

Fire in London.

THE acts relating thereto are,

6 *An. c.* 31.

7 *An. c.* 17.

11 *G. c.* 28.

4 *G. 3. c.* 14.

Fireworks.

Fireworks a nuisance.

IT shall not be lawful for any person (of what age, sex, degree, or quality soever) to make or cause to be made, or to sell or expose to sale, any squibs, rockets, serpents, or other fireworks, or any cases, moulds or other implements for making the same; or to permit the same to be cast or fired from his house or other place thereto belonging, into any publick street or road; or to throw or fire, or be aiding in throwing or firing the same, in any publick street, house, shop, river, or highway; and every such offence shall be adjudged a common nuisance. 9 & 10 *W. c.* 7. *f.* 1.

Making or selling rockets.

2. And if any person shall make or cause to be made, or give, sell, or offer to sale, any squibs, rockets, serpents, or other fireworks, or any cases, moulds, or other implements for making the same; he shall on conviction before one justice, or chief magistrate, by confession, or oath of two witnesses, forfeit 5*l.* half to the poor, and half to the prosecutor; to be levied by distress, by warrant of such justice or chief magistrate. 9 & 10 *W. c.* 7. *f.* 2.

Suffering rockets to be fired.

3. And if any person shall permit any the same to be cast or fired, from his house or other place thereto belonging, into any publick street or road, or any other house or place; he shall forfeit 20*s.* in like manner. 9 & 10 *W. c.* 7. *f.* 2.

Firing rockets.

4. And if any person shall cast or fire, or be aiding in casting or firing any the same, into any publick street, house, shop, river or highway; he shall forfeit 20*s.* in like manner; and if he shall not immediately on conviction pay to the justice the said forfeiture for the uses aforesaid, he shall commit him to the house of correction

to be kept to hard labour for any time not exceeding one month, unless he shall sooner pay the forfeiture. 9 & 10 *W. c. 7. f. 3.*

5. But nothing herein shall extend to the officers of Exception. the ordnance, or artillery company. 9 & 10 *W. c. 7. f. 4. 5.*

Fish and fishing. See **Game.**

Fish salted. See **Excise.**

Flight. See **Forfeiture.**

Forcible entry and detainer.

FORCE, in the common law, is most commonly taken in ill part, for unlawful violence. *1 Inst. 161.*

It seems that at the common law, a man disseised of any lands or tenements, if he could not prevail by fair means, might lawfully regain the possession thereof by force, unless he were put to a necessity of bringing his action, by having neglected to re-enter in due time: And it seems certain, that even at this day, he who is wrongfully dispossessed of his *goods*, may justify the retaking of them by force from the wrong doer, if he refuse to redeliver them; for the violence which happens thro' the resistance of the wrongful possessor, being originally owing to his own fault, gives him no just cause of complaint, inasmuch as he might have prevented it by doing as he ought. *1 Haw. 140.*

But this indulgence of the common law, in suffering persons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial, to the publick peace, by giving an opportunity to powerful men under the pretence of feigned titles, forcibly to eject their weaker neighbours, and also by force to retain their wrongful possessions, it was thought necessary by many severe laws to restrain all persons from the use of such violent methods of doing themselves justice. *1 Haw. 141.*

However even at this day, in an *action* of forcible entry grounded on those laws, if the defendant make himself a title which is found for him, he shall be dismissed without any inquiry concerning the force; for howsoever he may be

Forcible entry and detainer.

be punishable *at the king's suit*, for doing what is prohibited by statute, as a contemner of the laws, and disturber of the peace, yet he shall not be liable to pay any damages for it to the plaintiff, whose injustice gave him the provocation in that manner to right himself. 1 Haw. 141.

Since therefore offences of this nature are made such, not by the common law, but by statute (after having premised, that *they who keep possession with force, in lands and tenements, whereof they or their ancestors, or they whose estate they have in the same, have continued their possession in the same, by three whole years next before without interruption, shall not be endamaged by force of any of the statutes concerning forcible entry*, 8 H. 6. c. 9. s. 7. 1 Haw. 152.) I shall consider those several statutes, with the interpretation that hath been put upon them, under the following heads :

I. What is a forcible entry.

II. What is a forcible detainer.

III. How the same are punishable by action at law.

IV. How punishable at the general sessions.

V. How punishable by one justice.

VI. How punishable on a certiorari.

VII. How punishable as a riot.

I. What is a forcible entry.

By the 5 R. 2. c. 8. *None shall make any entry into any lands or tenements (or benefice of holy church, 15 R. 2. c. 2. or other possessions, 8 H. 6. c. 9. s. 2.) but where entry is given by the law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner; on pain of imprisonment and ransom at the king's will.*

[*Or other possessions*] It seems clear, that no one can come within the danger of these statutes, by a violence offered to another in respect of a way, or such like easement, which is no possession. And there seems to be no good authority, that an indictment will lie in this case for a common, or office. 1 Haw. 146.

[*Not with strong hand, nor with multitude of people*] It seems certain, that if one who pretends a title to lands, barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church or market, or for such like purpose, without doing any act, which either expressly or impliedly amounts to a claim

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claim of such lands, he cannot be said to make an entry thereinto. 1 *Haw.* 144.

But it seemeth, that if a person enter into another man's house or ground, either with apparent violence offered to the person of any other, or furnished with weapons, or company, which may offer fear, tho' it be but to cut, or take away another man's corn, grass, or other goods, or to fell or crop wood, or do any other like trespass, and tho' he do not put the party out of his possession, yet it seemeth to be a forcible entry. *Dalt. c. 126.*

But if the entry were peaceable, and after such entry made, they cut or take away any other man's corn, grass, wood, or other goods, without apparent violence or force; tho' such acts are counted a disseisin with force, yet they are not punishable as forcible entries. *Dalt. c. 126.*

But if he enter peaceably, and there shall by force or violence cut or take away any corn, grass, or wood, or shall forcibly or wrongfully carry away any other goods there being; this seemeth to be a forcible entry punishable by these statutes. *Dalt. c. 126.*

So also shall those be guilty of a forcible entry, who having an estate in land, by a defeasible title, continue with force in the possession thereof, after a claim made by one who had a right of entry thereto. 1 *Haw.* 145.

But he who barely agrees to a forcible entry made to his use, without his knowledge or privity, shall not be adjudged to make an entry within these statutes, because he no way concurred in, or promoted the force. 1 *Haw.* 145.

And, in general, it seemeth clear, that to denominate the entry forcible, it ought to be accompanied with some circumstances of actual violence, or terror; and therefore that an entry which hath no other force than such as is implied by the law, in every trespass whatsoever, is not within these statutes. 1 *Haw.* 145.

As to the matter of violence; it seems to be agreed, that an entry may be forcible, not only in respect of a violence actually done to the person of a man, as by beating him if he refuse to relinquish his possession, but also in respect of any other kind of violence in the manner of the entry, as by breaking open the doors of a house, whether any person be in it or not, especially if it be a dwelling house, and perhaps also by any act of outrage after the entry, as by carrying away the party's goods; but it seems that an entry is not forcible, by the bare drawing up a latch, or

Forcible entry and detainer.

pulling back the bolt of a door, there being no appearance therein of being done by *strong hand*, or *multitude of people*; and it hath been holden, that an entry into a house thro' a window, or by opening a door with a key, is not forcible. 1 *Haw.* 145.

In respect of the circumstances of *terror*; it is to be observed, that wherever a man, either by his behaviour or speech, at the time of his entry, gives those who are in possession just cause to fear, that he will do them some bodily hurt, if they will not give way to him, his entry is esteemed forcible, whether he cause such a terror, by carrying with him such an unusual number of attendants, or by arming himself in such a manner, as plainly intimates a design, or by actually threatening to kill, maim, or beat those who shall continue in possession, or by giving out such speeches as plainly imply a purpose of using force, as if one say that he will keep his possession in spite of all men, or the like. 1 *Haw.* 145.

But it seems that no entry shall be judged forcible, from any threatening to spoil another's *goods*, or to destroy his cattle, or to do him any other such like damage, which is not personal. 1 *Haw.* 146.

However it is clear, that it may be committed by a single person, as well as by twenty. 1 *Haw.* 146.

But nevertheless all those who accompany a man, when he makes a forcible entry, shall be judged to enter with him, whether they actually come upon the lands or not. 1 *Haw.* 144.

II. What is a forcible detainer.

It seemeth certain, that the same circumstances of violence or terror which will make an entry forcible, will make a detainer forcible also. And a detainer may be forcible, whether the entry were forcible or not. 1 *Haw.* 146.

III. How they are punishable by action at law.

If any person be put out or disseised of any lands or tenements in forcible manner, or put out peaceably, and after holden out with strong hand; the party grieved shall have assize of novel disseisin, or a writ of trespass against the disseisor; and if he recovers, he shall have treble damages, and the defendant moreover shall make fine and ransom to the king. 8 H. 6. c. 9. s. 6.

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The party grieved shall have assize, &c.] But this action, being at the suit of the party, and only for the right, is only where the entry of the defendant was not lawful; for if a man entereth with force, where his entry is lawful, he shall not be punished by way of action; but yet he may be indicted upon the statute, for the indictment is for the force, and for the king, and he shall make fine to the king, although his right is never so good. *Dalt. c. 129.*

Treble damages] And this he shall recover, as well for the mean occupation, as for the first entry: And albeit he shall recover treble damages, yet he shall recover costs, which shall be trebled also; for the word *damages* includeth costs of suit. *1 Inst. 257.*

IV. How punishable at the general sessions.

The party grieved, if he will lose the benefit of his treble damages and costs, may be aided and have the assistance of the justices at the general sessions, by way of indictment (A) on the statute of 8 H. 6. Which being found there, he shall be restored to his possession, by a writ of restitution granted out of the same court to the sheriff. *Dalt. c. 129.*

In the caption of which indictment, it will be sufficient to say, *justices assigned to keep the peace of our lord the king*, without shewing that they have authority to hear and determine felonies and trespasses; for the statute enables all justices of the peace, as such, to take such indictments. *1 Haw. 147.*

And the tenement in which the force was made, must be described with convenient certainty; and must set forth that the defendant actually entred; and ousted the party grieved; and continueth his possession at the time of finding the indictment; otherwise he cannot have restitution, because it doth not appear that he needeth it. *1 Haw. 147, 149, 150.*

But if a man's wife, children, or servants do continue in the house or upon the land, he is not ousted of his possession; but his cattle being upon the ground, do not preserve his possession. *Dalt. c. 132.*

An indictment for forcible entry was quashed, for not setting forth, that the party was seised or disseised, or what estate he had in the tenement; for if he had only a term for years, then the entry must be laid, into the freehold of A. in the possession of B. *3 Salk. 169.*

Forcible entry and detainer.

V. How punishable by one justice.

1. For a more speedy remedy, the party grieved may complain to any one justice ; or to a mayor, sheriff, or bailiff, within their liberties. 8 H. 6. c. 9.

2. But altho' one justice alone may proceed in such cases, yet it may be advisable for him, if the time for viewing the force will suffer it, to take to his assistance one or two more justices.

3. Concerning which power of one justice, it is enacted as follows :

After complaint made to such justice, by the party grieved, of a forcible entry made into lands, tenements, or other possessions, or forcible holding thereof, he shall within a convenient time, at the costs of the party grieved (without any examining or standing upon the right or title of either party) take sufficient power of the county, and go to the place where such force is made. 15 R. 2. c. 2. 8 H. 6. c. 9. f. 2. Dalt. c. 44.

Complaint—by the party grieved] Yet these words do not inforce any necessity of such a complaint ; for it is holden, that the justice may and ought to proceed, upon any information or knowledge thereof whatsoever, tho' no complaint at all be brought unto him, by any party grieved thereby. Lamb. 147.

Power of the county] All people of the county, as well the sheriffs as other, shall be attendant on the justices, to arrest the offenders ; on pain of imprisonment and fine to the king. 15 R. 2. c. 2.

4. And if the doors be shut, and they within the house shall deny the justice to enter, it seems he may break open the house, to remove the force. Dalt. c. 44.

5. And if after such entry made the justice shall find such force ; he shall cause the offenders to be arrested. 15 R. 2. c. 2. 8 H. 6. c. 9. f. 2.

6. He shall also take away their weapons and armour, and cause them to be appraised, and after to be answered to the king as forfeited, or the value thereof. Dalt. c. 44.

7. Also such justice ought to make a record (B) of such force by him viewed ; which record shall be a sufficient conviction of the offenders, and the parties shall not be allowed to traverse it : And this record, being made out of the sessions, by a particular justice, may be kept by him ; or he may make it indented, and certify the one part into the king's bench, or leave it with the clerk of the peace ; and the other part he may keep himself. For this view of

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the force by the justice, being a judge of record, maketh his record thereof in the judgment of the law, as strong and effectual, as if the offenders had confessed the force before him; and touching the restraining of traverse, more effectual, than if the force had been found by a jury, upon the evidence of others. (This is, as to the fine and imprisonment, but not as to restitution.) 15 R. 2. c. 2. *Dalt. c. 44.*

8. And the offenders, being arrested (as before is said), shall be put in the next gaol (C) there to abide convict by the record of the same justice, until they have made fine and ransom to the king. 15 R. 2. c. 2.

Shall be put in the next gaol] It is said, that the justice hath no power to commit the offender to gaol, unless he do it upon his own view of the fact, and not upon the jury finding the same afterwards. *Dalt. c. 44. 1 Haw. 142.*

And if such offenders, being in the house at the coming of the justice, shall make no resistance, nor make shew of any force, then the justice cannot arrest or remove them at all upon such view. *Dalt. c. 44.*

But howsoever, if the force be found afterwards, by the inquiry of the jury, the justice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after send them to the gaol, until they have found sureties for the peace. *Dalt. c. 44.*

Note; Mr. Dalton, in this place says, *good behaviour*, which I have presumed to alter to *the peace*, as deeming it much the safer; and not being sufficiently satisfied concerning the power of a justice of the peace to bind to the good behaviour in the like cases, which power Mr. Dalton hath enlarged more than all other authors, without any assistance from the commission of the peace, or any act of parliament, other than had been for above 200 years before.

Until they have made fine] H. 1 G. 2. K. and Sir Edm. Ellewell. He was brought up upon a *habeas corpus*, with a return of the cause of his commitment, which was upon a conviction of forcible entry and detainer. And it being moved to discharge him upon exceptions to the commitment, the court refused to enter into the consideration of them, till the conviction was likewise regularly removed before them. But by consent he was bailed in the mean time. And this term the conviction being before the court, it appeared that there was no fine set by the justices,

Forcible entry and detainer.

and it was therefore moved to be quashed. It was agreed on both sides, that there should be a fine; but it was insisted, that it being now before the king's bench by a certiorari, they might set the fine. But by the court, We are not to execute the judgment of an inferior court. The conviction is to be upon view, and they who view the nature of the force are the properest judges what fine to set; and though a certiorari should come before the fine is set, yet it would be no contempt in the justices to compleat their judgment by setting one. *Lambard* indeed was of opinion, that the justices could not set the fine at all; but upon what foundation we can never imagine. The justices are not bound to do it upon the spot, but may take a reasonable time to consider of the fine; because by the words of the act, the commitment is to be, till he has paid the fine. The conviction must be quashed, and the defendant discharged. *Str.* 794. *L. Raym.* 1515. *Seff. C. V.* 1. 289.

And the same was likewise solemnly resolved in *Leigh-ten's* case; and that the justice may assess the same, either before the commitment or after. 1 *Haw.* 142.

And the fine must be assessed upon every offender severally, and not upon them jointly; and the justice ought to estreat the fine, and to send the estreat into the exchequer, that from thence the sheriff may be commanded to levy it for his majesty's use. *Dalt. c.* 44.

But upon payment of the fine to the sheriff, or upon sureties found (by recognizance) for the payment thereof, it seemeth that the justice may deliver the offenders out of prison again at his pleasure. *Dalt. c.* 44.

9. And so much concerning removing the force: But the party ousted cannot be restored to his possession by the justice's view of the force; nor unless the same force be found by the inquiry of a jury.

Concerning which it is enacted as follows: *And tho' that the persons making such entry be present, or else departed before the coming of the justice; he may notwithstanding in some good town next to the tenements so entered, or in some other convenient place by his discretion (and that, tho' he go not to see the place where the force is; Dalt. c. 44.) have power to enquire by the people of the county, as well of them that make such forcible entry, as of them which hold the same with force.* 8 H. 6. c. 9. s. 3.

10. In order to which, the justice shall make his precept (D) to the sheriff, commanding him in the king's behalf, to cause to come before him, sufficient and indifferent persons, dwelling

dwelling next about the lands so entered, to enquire of such entries; whereof every man shall have lands or tenements of 40 s. a year, above reprises. And the sheriff shall return issues on every of them, at the day of the first precept returnable 20 s. and at the second day 40 s. and at the third day 100 s. and at every day after double. And the sheriff making default, shall on conviction before the same justice, or before the judge of assize, forfeit 20 l. half to the king, and half to him who shall sue, with costs; and moreover shall make fine and ransom to the king. 8 H. 6. c. 9. s. 4, 5.

Before the same justice] And the justice may proceed against the sheriff for this default, either by bill at the suit of the party, or by indictment at the suit of the king. Dalt. c. 44.

11. And the defendant also, if he is not present, ought to be called to answer for himself; for it is implied by natural justice in the construction of all laws, that no one ought to suffer any prejudice thereby, without having first an opportunity of defending himself. 1 Haw. 154.

12. And it seems to be settled at this day, that if the defendant tender a traverse of the force, the justice ought not to make any restitution, till the traverse be tried. 1 Haw. 154.

13. The defendant may also by the 31 El. c. 11. plead three years possession; whereby it is enacted, that no restitution upon an indictment of forcible entry, or holding with force, shall be made, if the person indicted have had the occupation, or been in quiet possession for three years together next before the indictment found, and his estate therein not determined; and restitution shall stay till that be tried: and if it is found against the party indicted, he shall pay such costs and damages as the judges or justices shall assess; to be recovered as costs and damages in judgment or other actions.

And it hath been holden that the plea of such possession is good, without shewing under what title, or of what estate such possession was; because it is not the title, but possession only, which is material in this case. 1 Haw. 152.

14. And it was holden by the court in Leighton's case, that if the defendant shall either traverse the entry or the force, or plead that he has been three years in possession, the justice may summon a jury for the trial of such traverse, for it is impossible to determine it upon view; and if the justice have no power to try it, it would be easy for any one to elude the statute by the tender of such a traverse, and therefore by a necessary construction the justice

Forcible entry and detainer.

must needs have this power as incidental to what is expressly given him. 1 Haw. 142.

15. And this traverse must be tendered in writing, and not by a bare denial of the fact in words; for thereupon a *venire facias* must be awarded, a jury returned, the issue tried, a verdict found, and judgment given, and costs and damages awarded; and there must be a record, which must be in writing, to do all this, and not a verbal plea. *Dalt. c. 133. 1 Haw. 154.*

16. Upon which traverse tendred, the justice shall cause a new jury to be returned by the sheriff, to try the traverse; which may be done the next day, but not the same day. *Dalt. c. 133.*

17. And it seemeth, that he who tendreth the traverse, shall bear all the charges of the trial; and not the king, or the party prosecuting. *Dalt. c. 133.*

18. And if such forcible entry or detainer be found (E) before such justice, then the said justice shall cause to reseise (F) the lands and tenements so entered or holden, and shall restore the party put out, to the full possession of the same. 8 H. 6. c. 9. f. 3.

The said justice] It seems to be agreed, that no other justices of the peace, except those before whom the indictment shall be found, shall have any power either at the sessions or out of it, to make any award of restitution. 1 Haw. 152.

Shall cause to reseise] And the justice may break open the house by force, to reseise the same; and so may the sheriff do, having the justice's warrant. *Dalt. c. 44.*

Reseise] That is, shall remove the force, by putting out all such offenders as shall be found in the house, or upon the lands, that entered or held with force. *Dalt. c. 130.*

And shall restore the party put out] And this he may do in his own proper person; or he may make his warrant to the sheriff to do it. *Dalt. c. 44. 1 Haw. 151, 2.*

19. And by 21 f. c. 15. it is enacted, that such judges, justices, or justice of the peace, as may give restitution unto tenants of any estate of freehold, may give the like unto tenants for term of years, tenants by copy of court roll, guardians by knight's service, tenants by eligit, statute merchant and staple, of lands or tenements by them so holden, which shall be entered upon them by force, or holden from them by force.

VI. How punishable on a certiorari.

Although regularly the justices only who were present at the inquiry, and when the indictment was found ought to award restitution; yet if the record of the presentment or indictment shall be certified by the justice or justices into the king's bench, or the same presentment or indictment be removed and certified thither by certiorari, the justices of that court may award a writ of restitution to the sheriff, to restore possession to the party expelled; for the justices of the king's bench have a supreme authority in all cases of the crown. *Dalt. c. 44.*

Also where upon a removal of the proceedings into the king's bench the conviction shall be quashed, the court will order restitution to the party injured. As in the case of *K. and Jones, M. 8 G.* A conviction of forcible entry was quashed for the old exception of *messuage* or *tenement*, by reason of the uncertainty; but the restitution was opposed, on an affidavit that the party's title (which was by lease) was expired since the conviction. But the court said, they had no discretionary power in this case, but were bound to award restitution on quashing the conviction, *Str. 474.*

VII. How punishable as a riot.

If a forcible entry or detainer shall be made by three persons or more, it is also a riot, and may be proceeded against as such, if no enquiry hath before been made of the force. *Dalt. c. 44.*

A. Indictment for a forcible entry and detainer at common law.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of ——— in the county aforesaid, gentleman, and B. O. late of the same, yeoman, together with divers other malefactors and disturbers of the peace of our said lord the king (whose names to the jurors aforesaid are yet unknown) on the ——— day of ——— in the ——— year of the reign of ——— with force and arms, at ——— aforesaid, in the county aforesaid, unlawfully and injuriously did enter into a certain barn and a certain orchard, then and there being in the possession

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session of one A. I. and that the said A. O. and B. O. together with the said other malefactors, then and there, with force and arms, unlawfully and injuriously did expel, amove, and put out the said A. I. from the possession of the said barn and orchard, and the said A. I. so as aforesaid expelled, amoved, and put out from the possession of the said barn and orchard, then and there, with force and arms, unlawfully and injuriously did keep out, and still do keep out, to the great damage of him the said A. I. and against the peace of our said lord the king, his crown and dignity.

Indictment on the statute.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. I. late of the parish of _____ in the county aforesaid, gentleman, on the _____ day of _____ in the _____ year of the reign of _____ was possessed of a certain messuage, with the appurtenances, situate, lying, and being in _____ in the parish aforesaid, in the county aforesaid, for a certain term of years, then and still to come, and unexpired, and being so possessed thereof, one A. O. late of _____ in the said county, yeoman, afterwards, to wit, the said _____ day of _____ in the year aforesaid, into the same messuage, with the appurtenances aforesaid, in _____ aforesaid, in the parish and county aforesaid, with force and arms, and with strong hand, unlawfully did enter, and the said A. I. from the peaceable possession of the said messuage, with the appurtenances aforesaid, then and there with force and arms, and with strong hand, unlawfully did expel and put out, and the said A. I. from the possession thereof, so as aforesaid, with force and arms, and with strong hand, being unlawfully expelled and put out, the said A. O. him the said A. I. from the aforesaid _____ day of _____ in the year aforesaid, until the day of the taking this inquisition, from the possession of the said messuage, with the appurtenances aforesaid, with force and arms, and with strong hand, unlawfully and injuriously then and there did keep out, and still doth keep out, to the great damage of the said A. I. against the peace of our said lord the king, and against the form of the statutes in that case made and provided.

Note; If it is a freehold, then the party must be said to be *seised* thereof in his demesne as of fee; and consequently he must be thereof *disseised*: otherwise if it is of a lesser estate, of which he is not properly said to be *seised*,

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Forcible entry and detainer.

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but possessed thereof at the will of the lord, according to the custom of the manor, or the like, and then he must be expelled, ejected, amoved, or the like.

B. Record of a forcible detainer upon view.

Note ; The books upon the office of a justice of the peace do generally set forth, that the record ought to be in the present tense, and not in the time past (and herewith do accord the adjudged cases in the court of king's bench, *Sir. 443.*) ; yet nevertheless they do all exhibit the form of a record in the time past, and not in the present : Therefore I have taken the liberty to alter the same, from the record in *L. Raymond* of the conviction of *Sir Edm. Elwell* aforesaid, and others ; adding the fine thereunto, for the want of which that conviction was quashed. And I have given the form of a record of a forcible detainer, rather than of a forcible entry, because the justice for the most part cannot be supposed to be present at the entry, as not having knowledge thereof until after the entry is made.

Kent, **B**E it remembred, that on the 15th day of Sep. in to wit. **B** the first year of the reign of our sovereign lord George the second of Great Britain, France, and Ireland, king, defender of the faith, and so forth, at Beckingham in the county of Kent, aforesaid, Eliz. Elwell, complaineth to us Sir E. Bettenfon, baronet, P. Burrel, and W. Passenger, esquires, three of the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, that Sir Edm. Elwell, late of London, baronet, Joseph Billers, late of ——— and Daniel Monty, late of ——— into the messuage of her the said E. E. being the mansion house of her the said E. E. called Langley house, situate within the parish of Beckingham aforesaid, did enter, and her the said E. E. of the messuage aforesaid, whereof the said E. E. at the time of the entry aforesaid, was seised as of the freehold of her the said E. E. for the term of her life, unlawfully ejected, expelled, and amoved, and the said messuage from her the said El. E. unlawfully, with strong hand and armed power, do yet hold and from her detain, against the form of the statute in such case made and provided ; whereupon the same El. E. then to wit, on the said 15th day of Sep. at the parish of B. aforesaid, prayeth of us, so as aforesaid being justices, to her in this behalf that a due remedy be provided, according

Forcible entry and detainer.

cording to the form of the statute aforesaid: Which complaint and prayer by us the aforesaid justices being heard, we the aforesaid E. B. baronet, P. B. and W. P. esquires, justices aforesaid, to the messuage aforesaid personally have come, and do then and there find and see the aforesaid Edm. E. J. B. and D. M. the aforesaid messuage, with force and arms, unlawfully, with strong hand and armed power, detaining, against the form of the statute in such case made and provided, according as she the same El. E. so as aforesaid hath unto us complained: Therefore it is considered by us the aforesaid justices, that the aforesaid Edmund Elwell, Joseph Billers and Daniel Monty, of the detaining aforesaid with strong hand, by our own proper view then and there as is aforesaid had, are convicted, and every of them is convicted, according to the form of the statute aforesaid; Whereupon we the justices aforesaid, upon every of the aforesaid Ed. E. J. B. and D. M. do set and impose severally a fine of 10 l. of good and lawful money of Great Britain, to be paid by them and every of them severally to our said sovereign lord the king, for the said offences; and do cause them, and every of them, then and there to be arrested; and the same Ed. E. J. B. and D. M. being convicted, and every of them being convicted upon our own proper view, of the detaining aforesaid, with strong hand as is aforesaid, by us the aforesaid justices are committed, and every of them is committed, to the gaol of our said lord the king, at Maidstone, in the county of Kent aforesaid, being the next gaol to the messuage aforesaid, there to abide respectively, until they shall have paid their several fines respectively, to our said lord the king, for their respective offences aforesaid. Concerning which the premisses aforesaid, we do make this our record. In witness whereof, we the aforesaid E. B. baronet, P. B. and W. P. esquires, the justices aforesaid, to this record our hands and seals do set, at the parish of B. aforesaid, in the county of Kent aforesaid, on the 15th day of Sep. in the first year aforesaid of the reign of our said sovereign lord the now king.

C. Mittimus for forcible detainer.

Westmorland. **E**DWARD Hassel, esquire, one of the justices of our sovereign lord the king's majesty, assigned to keep the peace within the said county of W. and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the keeper of his majesty's gaol at——in the said county, and to his deputy and deputies there, and to every of them, greet-

ing:

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ing: Whereas upon complaint made unto me this present day, by A. I. of——— in the said county, yeoman, I went immediately to the dwelling house of the said A. I. at———aforesaid in the said county, and there found A. O. late of———labourer, B. O. late of the same, weaver, and C. O. late of———butcher, forcibly with strong hand and armed power, holding the said house, against the peace of our said lord the king, and against the form of the statute in such case made and provided: Therefore I send you, by the bringers hereof, the bodies of the said A. O. B. O. and C. O. convicted of the said forcible holding, by mine own view, testimony and record; commanding you in his said majesty's name to receive them into your said gaol, and there safely to keep them, and every of them respectively, until they shall have respectively paid the several sum of 10l. of good and lawful money of Great Britain, to our said sovereign lord the king, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses respectively. Herein fail you not, at the peril that may follow thereof. Given at———aforesaid, in the county aforesaid, under my seal, the———day of———in the———year of the reign of our said sovereign lord king George the third.

Note; By the forms in all the books, all the offenders stand committed until all have paid, so as that the first shall not be discharged on payment of his own fine, but continue until all the rest have paid likewise; which seems unreasonable, and is not warranted by the statute.

D. Precept to the sheriff to return a jury.

Westmorland. **R**ICHARD Whinfield, esquire, one of the justices of our lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the sheriff of the said county, greeting: On behalf of our said lord the king, I command you, that you cause to come before me at———in the county aforesaid, on the———day of———next ensuing, twenty-four sufficient and indifferent men, of the neighbourhood of———aforesaid, in the county aforesaid, every of whom shall have lands or tenements of 40s. yearly at the least, above reprises, to inquire upon their oaths for our said lord the king, of a certain entry made with strong hand (as it is said) into the messuage of one A. I. at———aforesaid, in the county aforesaid, against the form of the statute in such case made and provided.

Forcible entry and detainer.

provided. And you are to return upon every of the jurors by you in this behalf to be impanelled, 20 s. of issues at the aforesaid day. And have you then there this precept. And this you shall in no wise omit, upon the peril that shall thereof ensue. *Witness* the said R. W. at ——— in the county aforesaid, the ——— day of ——— in the ——— year of the reign of ———

The jurors oath.

YOU shall true inquiry and presentment make of all such things as shall come before you, concerning a forcible entry [or detainer] said to have been lately committed in the dwelling house of ——— yeoman, at ——— in this county; you shall spare no one for favour or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you: So help you god.

The oath that A. F. your foreman hath taken on his part, you and every of you shall truly observe, and keep on your parts: So help you god.

E. The inquisition, indictment, or finding of the jury.

Westmorland. **A**N inquisition for our sovereign lord the king, indented and taken at ——— in the said county, the ——— day of ——— in the ——— year of the reign of ——— by the oaths of ——— good and lawful men of the said county, before J. P. esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, who say upon their oaths aforesaid, that A. I. of ——— aforesaid, yeoman, long since lawfully and peaceably was seised in his demesne as of fee [if it is not freehold, then say, possessed [of and in one messuage, with the appurtenances, in ——— aforesaid, in the county aforesaid, and his said possession [and seisin] so continued until A. O. late of ——— yeoman, B. O. late of the same, yeoman, and C. O. late of the same, yeoman, and other malefactors unknown, the ——— day of ——— now last past, with strong hand and armed power, into the messuage aforesaid, with the appurtenances aforesaid, did enter, and him the said A. I. thereof disseised, and with strong hand expelled; and him the said A. I. so disseised and expelled from the said messuage with the appurtenances

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appurtenances aforesaid, from the said—day of—
until the day of the taking of this inquisition, with like strong
hand and armed power did keep out, and do yet keep out, to
the great disturbance of the peace of our said lord the king,
and against the form of the statute in such case made and
provided.

*We whose names are hereunto set, being the jurors above-
said, do upon the evidences now produced before us,
find the inquisition aforesaid true.*

A. B.

C. D. &c.

F. Warrant to the sheriff for restitution.

Westmorland. **M**ARTIN Dunn, esquire, one of the
justices of our sovereign lord the king,
assigned to keep the peace in the said county, and also to hear
and determine divers felonies, trespasses, and other misdemeanors
in the said county committed: To the sheriff of the said county,
greeting: Whereas by an inquisition taken before me the justice
aforesaid, at—in the county aforesaid, on this present
—day of—in the—year of the reign of
—upon the oaths of—and by virtue of the statutes
made and provided in cases of forcible entry and detainer, it
is found, that A. O. late of—yeoman, and B. O. late
of—yeoman, on the—day of—now last past,
into a certain messuage, with the appurtenances, of A. I.
of—aforesaid, in the county aforesaid, gentleman,
situate, lying, and being at—aforesaid, in the county
aforesaid, with force and arms did enter, and him the said
A. I. thereof then with strong hand did disseise and drive out,
and him the said A. I. thus driven out from the aforesaid
messuage, with the appurtenances, from the—day of—
aforesaid, to this present day of the taking of the said inqui-
sition, with strong hand and armed force did keep out, and
do yet keep out, as by the inquisition aforesaid more fully ap-
peareth of record: Therefore on the behalf of our said sove-
reign lord the king, I charge and command you, that taking
with you the power of the county (if it be needful) you go to the
said messuage and other the premisses, and the same with the
appurtenances you cause to be resealed, and that you cause the
said A. I. to be restored and put into his full possession thereof,
according as he, before the entry aforesaid, was seised, accord-
ing to the form of the said statutes. And this you shall in no
wise omit, on the penalty thereon incumbent. Given under my
hand

Forcible entry and detainer.

hand and seal at ——— in the said county, the ——— day
 ——— in the ——— year of the reign of ———

Foreign service.

Artificers.

I. BY the 5 G. c. 27. If any person shall contract with, entice, to endeavour to persuade any manufacturer or artificer in wool, iron, steel, brass, or any other metal, clockmaker, watchmaker, or any other artificer or manufacturer, to go out of this kingdom, into any foreign country out of his majesty's dominions, and shall (on prosecution in 12 months) be convicted thereof on indictment or information, in the courts at *Westminster*, assizes or sessions of the county where the offence shall be committed; he shall for the first offence be fined not exceeding 100*l.* and be imprisoned for three months, and until the fine be paid; for the second offence, shall be fined at the discretion of the court, and be imprisoned 12 months, and till the fine is paid. *f.* 1, 2.

And if any subject, being such artificer or manufacturer, shall go into any country out of his majesty's dominions, to exercise or teach any the said manufactories to foreigners, or if any subject who shall be in any such foreign country, and there exercise any the said manufactories, shall not return in six months next after warning be given him, by the ambassador, minister, or consul, or person authorized by him, or by a secretary of state, and from thenceforth continually inhabit within this realm; he shall be incapable of any legacy, or of being executor, or administrator, and of taking any lands, by descent, devise, or purchase, and forfeit his lands and goods, and be deemed an alien, and out of the king's protection. *f.* 3.

And on complaint on oath before a justice, that any person is endeavouring to seduce or draw away any such manufacturer or artificer, or that he hath contracted or is preparing to go out of the kingdom; he may issue his warrant to bring such person before him or some other justice; and if it shall appear to such justice by confession, or the oath of one witness, that such person was guilty of any the said offences, he may bind him over to the next assizes or sessions, to answer the premises; and if he shall upon indictment be there convicted of any such promise or contract,

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tract, or preparation to go abroad beyond the seas, he shall give such security, not to depart out of the realm, as such court shall think reasonable, and be imprisoned until such security be given. *f. 4.*

And by the 23 G. 2. c. 13. If any person shall contract with, or endeavour to persuade or seduce any artificer in the manufactures of *Great Britain*, to go into any foreign country, not belonging to the crown of *Great Britain*; and shall be thereof convicted, in twelve months, in the king's bench, or at the assizes; he shall for every such person forfeit 500 l. and be imprisoned in the common gaol for twelvemonths, and till payment of the forfeiture; and for a second or other subsequent offence, shall forfeit 1000 l. and be imprisoned two years, and till payment.

f. 1, 2.

And if any person shall put on board any vessel not bound directly to some of the *British* dominions, any tools or utensils, or part thereof proper for either the wollen or silk manufactures; he shall forfeit the same and 200 l.

id. f. 3.

And any officer of the customs may seize, and secure in some of the king's warehouses, all such tools and utensils as shall be found on board any such vessel; and the same, after condemnation, shall be publicly sold.

id. f. 4.

And if the master or captain shall knowingly permit any the said tools or utensils to be put on board his ship; he shall forfeit 100 l. and if it is a king's ship he shall also forfeit his office, and be incapable of any office under the crown. *id. f. 5.*

And if any officer of the customs shall take any entry outward or sign any sufferance for shipping or exporting any the said tools, or knowingly permit the same to be done; he shall forfeit 100 l. and his office, and be incapable of any office under the crown. *id. f. 6.*

All which said penalties, on this act shall be half to the king, and half to him that shall prosecute. *id. f. 7.*

2. If any subject shall enlist or enter himself, or shall engage to go beyond the seas or embark with intent to enlist and enter himself, altho' no enlisting money be actually paid to him; or if any person shall procure any subject to enlist or enter himself, or hire or retain any subject, with intent to cause him to enlist or enter himself, or retain, engage, or procure any subject (tho' no enlisting money be paid) to go beyond the seas or im-

Foreign service.

bark with intent and in order to be enlisted to serve any foreign prince, state or potentate, as a soldier, without his majesty's leave; he shall be guilty of felony without benefit of clergy. 9 G. 2. c. 30. s. 1. 29 G. 2. c. 17. s. 4.

And offences committed out of the realm may be tried in any county in *England*. 9 G. 2. c. 30. s. 2.

But if any person so enlisted, or inticed to go beyond the seas in order to be enlisted, as a non-commission officer or private soldier, in any foreign service, shall in fourteen days voluntarily discover upon oath, before any justice or other civil magistrate, the person by whom he was enlisted or enticed, so as he be convicted, he shall be indemnified. s. 3.

Forestalling, ingrossing, and regrating.

Derivation.

Forestalling (*forestaellan, or forestallan*) in the English Saxon signifieth properly to *market before the publick*, or to *prevent the publick market*; and metaphorically, to *intercept* in general: and seemeth derived from *fore*, which is the same as *before*, and *stalle* a standing place or department; from whence sprang the antient word *stallage*, which signifieth money paid for erecting a stall or stand, for the selling of goods in a fair or market:

Ingrossing is from *in*, and *gross*, great or whole:

And *regrating*, from *re*, again, and the French *grater*, to *grate* or *scrape*; and signifieth the scraping or dressing of cloth or other goods, in order for selling the same again.

I shall treat, first, concerning these offences at the common law; and, secondly, concerning the same by statute.

I. Concerning these offences at the common law.

These offences
at common law.

1. At the common law, all endeavours whatsoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency there-to whether by spreading false rumours, or by buying things in a market before the accustomed hour, or by buying

buying and selling again the same thing in the same market, or by any other such like devices, are highly criminal, and punishable by fine and imprisonment. 1 *Haw.* 234, 5.

2. By the common law, a merchant bringing victuals into the realm, may sell the same in gross; but no person can lawfully buy within the realm any merchandize in gross, and sell the same in gross again, without being liable to be indicted for the same. 3 *Inst.* 196.

3. And the bare ingrossing of a whole commodity, with an intent to sell it at an unreasonable price, is an offence indictable at common law, whether any part thereof he sold by the ingrosser or not. 1 *Haw.* 235.

4. And so jealous is the common law of all practices of this kind, that it will not suffer corn to be sold in the sheaf; perhaps for this reason, because by such means the market is in effect forestalled. 1 *Haw.* 235.

5. Anciently the ingrosser and regrator were comprehended under the word forestaller; but now they are distinguished by the following statute.

II. Concerning these offences by statute.

By statute:

1. *Whosoever shall buy or cause to be bought, any merchandize, victual, or any other thing whatsoever, coming by land or by water toward any market or fair, to be sold in the same, or coming toward any city, port, haven, creek, or road, from any parts beyond the sea to be sold; or make any bargain, contract or promise, for the having or buying the same, or any part thereof so coming as is aforesaid, before the said merchandize, victuals, or other things shall be in the market, fair, city, port, haven, creek or road, ready to be sold; or shall make any motion by word, letter, message, or otherwise, to any person for the inbancing of the price, or dearer selling of any thing abovementioned; or else dissuade, move, or stir any person coming to the market or fair, to abstain or forbear to bring or convey any of the things above rehearsed, to any market, fair, city, port, haven, creek, or road to be sold, as aforesaid,—shall be deemed a forestaller.* (A) 5 & 6 Ed 6. c. 14. s. 1.

Forestalling, what.

2. *Whosoever shall ingross, or get into his hands by buying, contracting, or promise-taking, other than by demise, grant, or lease of land or tythe, any corn growing in the fields, or any other corn or grain, butter, cheese, fish, or other dead victuals whatsoever, to the intent to sell the same again,*

Ingrossing what.

shall be deemed an unlawful ingrosser. (B) 5 & 6 Ed. 6. c. 14. f. 3.

And it is said not to be sufficient in an indictment or information, to say that the defendant bought so much goods, but the words of the statute are to be pursued, which are—*shall ingross or get into his hands by buying*. But it is not necessary to set forth, that the defendant did not come by it by a demise of land, or the like; but the defendant, if he have any such matter to alledge, must give it in evidence. 1 Haw. 237, 238.

Regrating, what.

3. *Whosoever shall by any means regrate, obtain, or get into his hands or possession, in a fair or market, any corn, wine, fish, butter, cheese, candles, tallow, sheep, lambs, calves, swine, pigs, geese, capons, hens, chickens, pigeons, conies, or other dead victual whatsoever, that shall be brought to any fair or market to be sold, and do sell the same again in any fair or market holden or kept in the same place, or in any other fair or market within four miles thereof, shall be deemed a regrater.* (C) 5 & 6 Ed. 6. c. 14. f. 2.

Penalty.

4. And if any shall be guilty of any the said offences, he shall for the first offence be imprisoned two months, and forfeit the value of the goods; for the second offence, be imprisoned half a year, and forfeit double value; and for the third offence, shall be set on the pillory forfeit all his goods and be imprisoned during the king's pleasure. 5 & 6 Ed. 6. c. 14. f. 4, 5, 6.

Half the said forfeitures to go to the king, and half to him that will sue, in two years after the offence. *id.* f. 9, 14.

And the sessions may hear and determine the same, by inquisition, presentment, bill, or information, and by examination of two witnesses, and may make process thereupon, as though they were indicted; and estreat the king's moiety, and award execution of the other moiety for the party, by *feri facias*, or *capias*, as the courts at *Westminster* may do: And if any conviction or attainder shall be at the king's suit only, then the whole forfeitures shall be estreated and levied to the king's use. f. 10.

Form of the indictment or information.

5. From hence it seems clearly to follow, as well as from the general rules of law, that no information for any of the said offences against the said statute can be good, without shewing in certain the quantity of the thing for which the penalty is supposed to be incurred, not only because otherwise the judgment to be given on

such an information can never be pleaded in bar of any other, because it cannot appear that both of them were brought for the same thing; but also because it cannot appear to the court what forfeiture the defendant ought to incur, unless the extent of the offence be specially set forth. 1 *Haw.* 238.

6. Provided, that the buying of any such barley, bigg, or oats as any person (not forestalling) shall buy to convert into malt or oatmeal, in his own house, and so shall be converted indeed; or the buying of any such thing by any such fishmonger, butcher, or poulterer, as concerneth his own faculty, craft, or mystery (otherwise than by forestalling) which shall sell the same again upon reasonable prices by retail; or the taking of any cattle, corn, grain, butter, cheese, or any other thing abovementioned, reserved without fraud upon any lease for lives or years; or the buying of any wine or other dead victual above mentioned, being apt and meet for man's sustenance, by any innholder or other victualler, to sell the same by retail within his house, or to any of his neighbours for their sustenance, for reasonable prices; or the buying of any dried or salted fish, herring or sprats (not forestalled) and sold for reasonable prices; or the buying of any corn, fish, butter or cheese, by any badger, lader, kidder, or carrier duly licensed, who shall sell or deliver in open fair or market, or to any other victualler, or to any other person, for the provision of his house, all such corn, grain, butter and cheese as he shall buy or cause to be bought, and that within one month next after he shall so buy any such corn, grain, butter or cheese, so that the same shall be bought without forestalling; or else that any common provision to be made without fraud by any person, of any the things abovesaid, for any city, borough, or town corporate, or for provision of victualling of any ship, castle, or fort within the king's dominions, without forestalling, which shall be employed only to that use;—shall not be deemed an offence contrary to this act. 5 & 6 *Ed.* 6. c. 14. s. 7.

Exceptions and limitations.

And if any person, having sufficient corn and grain for the provision of his own house and sowing of his grounds for one year, do buy any corn in any fair or market, for the change of his seed, and do not bring to the same fair or market the same day so much corn as he shall fortune to buy for his seed, and sell the same if he can as the price of corn then goeth in the said market or fair; every such person so buying corn for seed, shall forfeit double the va-

Forestalling, ingrossing, &c.

lue of the corn so bought: to be levied and disposed in manner aforesaid. *f. 8.*

And if any person shall buy any oxen, ronts, steers, kine, heifers, calves, sheep, lambs, goats, or kids living, and sell the same again alive, unless he keep and feed the same for five weeks in his own house, ground, ferm-ground, or such ground where he hath the herbage or common of pasture by grant or prescription; he shall forfeit double the value of the cattle or things so bought and sold again: to be levied and disposed in manner aforesaid.

f. 9.

Provided, that it shall be lawful to persons duly licensed, to buy (otherwise than by forestalling) corn, grain, or cattle, to be transported or carried by water from any port or place within *England or Wales*, to any other port or place within the said dominions, if he shall without fraud ship or embark within 40 days next after he shall have bought the same, or taken covenant or promise for the buying thereof; and with such expedition and diligence as wind and weather will serve do carry and transport the same, to such port or place as his cocket shall declare; and there do disembark, unlade, and sell the same; and bring a certificate thereof from a justice of the county, or mayor of the town corporate where the same shall be unladen, and also of the customer of the port where such unloading shall be, of the place and day where the said corn or cattle shall be disembarked, unladen, and sold, to be directed to the customer and comptroller of the port where the same were embarked. *f. 12.*

And provided, that it shall be lawful to any person dwelling within a mile of the main sea, to buy all manner of fish, fresh or salted (not forestalling the same), and to sell the same again at reasonable prices. *f. 15.*

And provided, that licensed drovers may buy cattle in such counties where they have been wont to buy the same, at their free liberty and pleasure; and to sell the same, as is aforesaid, at reasonable prices in common fairs and markets distant from the place where they shall buy the same 40 miles at the least: so that the same be not bought by way of forestalling. *f. 16.*

Also the said act shall not exceed to wines, oils, sugars, spices, currans, nor other foreign victuals; fish and salt only excepted. 13 *El. c. 25. f. 21.*

And by the 15 *C. 2. c. 7.* When the quarter of wheat (*Winchester* measure) doth not exceed 48 s. rye 32 s. barley or malt 28 s. buck wheat 28 s. oats 13 s. 4 d. pease or beans

beans 32 s. any person (not forestalling, nor selling the same again in the same market in three months) may buy such corn, in open market, at or under such price, and lay it up, and sell the same again, without incurring any penalty. *f. 4.*

Also it hath been resolved, that such *viſtual* only, as is necessary for the food of man, is within the aforesaid statute of 5 & 6 *Ed. 6.* and therefore that apples and cherries, and such like fruit are not: but that salt is a *viſtual* within the meaning of it. *1 Haw. 237.*

7. By 31 *El. c. 5.* which ordains that informations for offences against penal statutes, must be laid in the proper county, it is provided, that nevertheless an information on the said statute of *Ed. 6.* against forestalling, ingrossing, or regrating, where the penalty shall appear to be 20*l.* or above, may be laid out of the proper county, and in any other county at the pleasure of the informer. Information may be laid in any county.

A. Indictment for forestalling.

Westmorland. **T**HE jurors for our lord the king, upon their oath present, that A. O. late of the parish of ——— in the county aforesaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— at the parish aforesaid, in the county aforesaid, did buy and cause to be bought of and from one A. S. twenty oxen, for the sum of 200*l.* of lawful money of Great Britain, as he the said A. S. then and there was driving the said twenty oxen towards the market of M. to sell the said twenty oxen in the said market, and before the said twenty oxen were brought into the said market, where the same should be sold; in contempt of our said lord the king and his laws; to the evil example of all others in the like case offending, against the peace of our said lord the king, his crown and dignity, and against the form of the statute in that case made and provided.

B. Indictment for ingrossing.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of ——— in the county aforesaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— at ——— aforesaid, in the county aforesaid, did ingross and get into his hands, by buying of and from one A. S. 50 quarters of wheat, to the intent to sell the same again; to the evil example of all others in the like case offending, against the peace

Forestalling, ingrossing, &c.

of our said lord the king, his crown and dignity, and against the form of the statute in that case made and provided.

C. Indictment for regrating.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of the parish of _____ in the county aforesaid, yeoman, on the _____ day of _____ in the _____ year of the reign of _____ at the parish aforesaid, in the county aforesaid, to wit, in a certain market then and there holden, did buy, obtain, and get into his hands and possession ten geese and twenty chickens, of and from one A. S. for the sum of 30s. of lawful money of Great Britain (the said geese and chickens then being brought to the said market by the said A. S. to be sold); and that afterwards, to wit, on the same _____ day of _____ in the year aforesaid, he the said A. O. at the parish aforesaid, in the county aforesaid, in the said market there, unlawfully did regrate the said geese and chickens, and sell the same again to one A. B. for the sum of 40s. of like lawful money of Great Britain, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, against the peace of our said lord the king, and against the form of the statute in that case made and provided.

Forests. See Game.

Forfeiture.

The forfeitures for particular offences may be found under their respective titles; here it is treated of forfeitures in general.

- I. Of forfeiture of lands and goods.
- II. Of loss of dower.
- III. Of corruption of blood.

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I. Of forfeiture of lands and goods.

1. IT seems agreed, that by the common law, all lands ^{Forfeiture of} of inheritance, whereof the offender was seized in lands, his own right, and also all rights of entry to lands in the hands of a wrong doer, are forfeited to the king, by an attainder of high treason, and to the lord of whom they are immediately holden, by an attainder of petit treason or felony. 2 *Haw.* 448.

But it seems clear, that the lord cannot enter into the lands holden of him, upon an escheat for petit treason or felony, without a special grant, till it appear by due process, that the king hath had his prerogative of the year, day, and waste. 2 *Haw.* 448.

Concerning which year, day and waste, it is enacted by the 17 *Ed.* 2. c. 16 that the king shall have the goods of all felons attainted, and fugitives, wheresoever they be found. And if they have freehold, it shall be forthwith taken into the king's hands, and the king shall have all profits of the same by one year and one day; and the land shall be wasted and destroyed in the houses, woods, and gardens, and in all manner of things, belonging to the same land. And after the king hath had the year, day, and waste, the land shall be restored to the chief lord of the fee, unless that he fine before with the king, for the year, day, and waste.

2. As to forfeiture of goods, it seems agreed, that all ^{Forfeiture of} things whatsoever, which are comprehended under the goods, notion of a personal estate, whether they be in action or possession, which the party hath, or is intitled to, in his own right, and not as executor or administrator to another, are liable to such forfeiture, in the following cases :

(1) Upon a conviction of treason or felony. 2 *Haw.* 450.

(2) Upon a flight found before the coroner, upon view of a dead body. *id.*

(3) Upon an acquittal of a capital felony, if the party is found to have fled. *id.*

(4) Also a person indicted of petit larceny, and acquitted, yet if it be found he fled for it, forfeits his goods, as in case of grand larceny. 1 *H. H.* 530. 2 *Haw.* 451.

But it is certain that the party may in all cases, except that of the coroner's inquest, traverse the finding of the flight. Also it seems agreed, that the particulars of the goods found to be forfeited may be also traversed. 2 *Haw.* 451.

5. Upon

Forfeiture.

(5) Upon a presentment by the oaths of 12 men that a person arrested for treason or felony, fled from, or resisted those who had him in custody, and was killed by them in the pursuit or scuffle. 2 *Haw.* 451.

(6) By being waived or left by a felon in his flight, whereby he forfeits the goods so waived, whether they be his own, or the goods of others stolen by him, which shall not be restored to the right owners but upon a proper prosecution. 2 *Haw.* 451.

(7) Also, a convict within clergy, forfeits all his goods, tho' he be burnt in the hand; yet thereby he becomes capable of purchasing other goods. 2 *H. H.* 388, 389.

But on burning in the hand, he ought to be immediately restored to possession of his lands. 2 *H. H.* 389.

Forfeiture upon
outlawry.

3. Upon outlawry in treason or felony, the offender shall lose and forfeit as much as if he had appeared, and judgment had been given against him, as long as the outlawry is in force. *Wood. b. 4. c. 5.*

And those that tarry till the exigent, in treason, felony, or petit larceny, forfeit their goods, though they render themselves to justice, and are acquitted; for it was a flight in law. *Wood. b. 4. c. 5.*

Forfeiture in se
defendendo.

4. But where the killing a man in his own defence is in the law no felony, there is no forfeiture, unless he fled; for that is a distinct forfeiture, although the party be not guilty of the fact. 1 *H. H.* 493.

To what time
the forfeiture
shall relate.

5. It seems agreed, that the forfeiture, upon an attainder either of treason or felony, shall have relation to the time of the offence, for the avoiding of all subsequent alienations of the land; but to the time of the conviction or flight found only, as to chattels; unless the party were killed in flying or resisting, in which case it is said, that the forfeiture of the chattels shall relate to the time of the offence. 2 *Haw.* 454.

What is to be
done with the
felon's goods be-
fore forfeiture.

6. But though the goods of an offender be not forfeited, till the conviction, or flight found by inquest, yet whether they may be seized upon the offence committed, hath been controverted; concerning which lord *Hale* saith thus:

It seemeth clear, that at the common law, if a man had committed felony or treason, or tho' possibly he had committed none, yet if he had been indicted, the sheriff, coroner, or other officer, could not seize and carry away the goods of the offender or party accused:

Again, he could not in that case have removed the goods out of the custody of the offender or party accused, and deliver them over to the constables or to the *villata*, to answer for them:

But

But if the party were indicted, the sheriff or other officer might make a simple seizure of them only to inventory and appraise them, and leave them to the custody of the servants or bailiff of the party indicted, in case he would give security against their being imbezilled, or in default thereof he might deliver them to the constable or vill to be answerable for them, but yet so that the party accused and his family have sufficient out of them for their livelihood and maintenance :

And possibly the same law was, tho' he were not indicted, but *de facto* had committed a felony, but with this difference, if he had been indicted, this kind of seizure might have been made, whether he committed the felony or not :

But in case there were no indictment, then it is at the peril of him that seizeth, if he committed not the felony :

And then as to the statute of 1 R. 3. c. 3. it is as follows ; *No sheriff or other person shall take or seize the goods of any person arrested or imprisoned for suspicion of felony, before he be convicted or attainted, or before the goods be otherwise forfeited ; on pain of double value to the party grieved :*

Mr. Stamford thinks this is but in affirmance of the common law, only that it gives a penalty : but it seems to be somewhat more than so, for this prohibits the seizure of the goods of a party imprisoned, tho' he were also indicted, but not yet convicted, where unquestionably the common law allowed such a seizure, if the party or his friends did not secure the forthcoming of the goods, where the party was indicted :

But upon this statute these things are considerable ;
1. As to persons at large, it seems to me (says he) that if they fly not, there can be no seizure at all made, whether they are indicted or not ; for the statute did not intend a greater privilege to a party imprisoned, than to him that is at large. 2. That if he be at large, and fly for it, yet his goods cannot be seized and removed, whether he be indicted or not indicted. 3. That if he be indicted, and at large, yet the goods cannot be removed, but only viewed, appraised, and inventoried, in the house or place where they lie :

And yet I know not how it comes to pass, says he, the use of seizing the goods of persons accused of felony, tho' imprisoned or not imprisoned, hath so far obtained notwithstanding this statute, that it passeth for law and common practice, as well by constables, sheriffs, and other the king's officers, as by lords of franchises, that there is nothing more usual ;

Upon

Forfeiture.

Upon the whole, he says, that the opinion of my lord *Coke*, in his 3 *Inst.* 228. hath truly stated the law, at least, as it stands upon the statute of 1 *R.* 3. viz. 1. That *before* the indictment, the goods of any person cannot be searched, inventoried, or in any sort seized. 2. That *after* the indictment, they cannot be seized and removed, or taken away, before conviction or attainder :

But then it may be said, to what purpose may they be searched and inventoried after indictment, if they may not be removed, but are equally liable to imbezilling as before :

I think (he says) he is not bound to find sureties, neither hath the officer at this day any power to remove them in default of sureties, and commit them to the vill, but only to inventory them, and leave them where he found them (unless in case of a second *capias* on the 25 *Ed.* 3. c. 14.) for the prisoner or party indicted may sell them *bona fide* ; and if he may do so, the vendee may take them, and the *villata* cannot refuse the delivering of them to the vendee, tho' the goods had been delivered to them :

But there is this advantage by the viewing and appraising, that thereby the king is ascertained what the goods are, and may pursue them that take or imbezel them, by information (if the party happen to be convict) and try the property with them, whether they are really sold, or sold only fraudulently without valuable consideration, to prevent the forfeiture. 1 *H. H.* 363, 4, 5, 6, 7.

II. Of loss of dower.

Forfeiture of
dower in felony.

In treason,

1. Albeit a person shall be attainted of felony, yet his wife shall not forfeit her dower. 1 *Ed.* 6. c. 12. f. 17.
2. But on his attainder of treason, she shall forfeit her dower. 5 & 6 *Ed.* 6. c. 11. f. 13. But in some kinds of treason (particularly with regard to the coin) there is a special saving of the wife's dower by statute.

III. Of corruption of blood.

Corruption of
blood.

1. It is agreed, that by an attainder of treason or felony, the blood is so far stained or corrupted, that the party loses all the nobility or gentility he might have had before, and becomes ignoble. 2 *Haw.* 456.
2. Also, that he can neither inherit as heir to an ancestor, nor have an heir. 2 *Haw.* 456.
3. But the king's pardon, tho' it doth not restore the blood, yet as to issues born after, hath the effect of a re-stitution. 1 *H. H.* 358.

But

4. But restitution of blood in its true nature and extent, can only be by act of parliament. 1 *H. H.* 358. 2 *Haw.* 458.

Forgery.

1. **F**ORGERY is an offence at common law, and an offence also by statute.

2. Forgery at the common law, is an offence in falsely and fraudulently making or altering any manner of record, or any other authentick matter of a publick nature; as a parish register, or any deed, will, privy seal, certificate of holy orders, protection of a parliament man, and the like. 1 *Haw.* 182, 184.

As for writings of an inferior nature, as private letters, and such like, the counterfeiting of them is not properly forgery; therefore in some cases it may be more safe to prosecute such offenders for a misdemeanor, as cheats. For by reason of the uncertainty of opinions, concerning proper forgeries at common law, indictments are generally brought upon some of the following statutes, and very few at common law. But if the indictment is at common law, and the offender is convicted, he may be pilloried, fined, and imprisoned. *Wood. b. 3. c. 3.* 1 *Haw.* 184.

But as to the power of justices of the peace in this matter, Mr. *Hawkins* says, it hath been settled of late, that they have no jurisdiction over forgery at the common law; the principal reason of which resolution (he says) as he apprehended, was, that inasmuch as the chief end of the institution of the office of these justices was for the preservation of the peace against personal wrongs and open violence, and the word *trespass* in its most proper and natural sense, is taken for such kind of injuries, it shall be understood in that sense only in the commission, or at the most to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace, as libels, and such like, which on this account have been adjudged indictable before justices of the peace. 2 *Haw.* 40. 1 *Salk.* 406.

But Mr. *Barlow* says nevertheless, that it seemeth clear, that a justice of the peace may take an information thereof, bind over the informers, examine the offender, certify his examination to the proper judges, and commit him to prison in order to abide his trial. *Barl.* 244.

3. The

3. The statutes that make forgery an offence are these that follow :

The first is that famous statute of the 5 *El. c. 14.* which by an example worthy to be imitated, doth (in order to prevent confusion) repeal all former statutes against forgery. By this it is enacted, that if any person upon his own head and imagination, or by false conspiracy and fraud with others, shall wittingly, subtilly, and falsely forge or make, or subtilly cause, or wittingly assent to be forged or made, any false deed, charter, or writing sealed, court roll, or the will of any person in writing, to the intent that the estate of freehold, or inheritance of any person, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person in the same may be molested, troubled, defeated, recovered, or charged; or shall pronounce, publish, or shew forth in evidence the same as true, knowing the same to be false and forged, to the intent as above (except lawyers or attorneys for their clients, not being privy to the forgery); and shall be thereof convicted, either upon action at the suit of the party, or otherwise according to the order and due course of the laws of the realm,——he shall pay to the party double costs and damages, and be set upon the pillory in some open market town or other open place, and have both his ears cut off, and his nostrils slit and seared with a hot iron, and shall forfeit the profits of his lands during life, and be imprisoned also during life. *s. 2.*

And all justices of oyer and terminer, and justices of assize, shall have power to inquire of, hear, and determine all offences in this act. *s. 10.*

Upon his own head] When the proceedings were in latin, *super proprium suum caput* was allowed to be good upon an indictment on this statute; the law having more regard that the statute be strictly pursued, than rendred into proper latin. *1 Haw. 187.*

Forge or make] Making a second deed, and antedating it, with intent to make it take place of a former deed, is forgery within this statute. *3 Inst. 167.*

Or subtilly cause, or willingly assent] To cause, is to procure or counsel one to forge; to assent, is to give his assent or agreement afterwards, to the procurement or counsel of another; to consent, is to agree at the time of the procurement of counsel, and such is in law a procurer. *3 Inst. 169.*

But lord Hale says, that an assent after the fact is committed, makes not the party assenting guilty or principal in

in the forging ; but it must be a precedent, or concomitant assent. 1 H. H. 684.

False deed, charter, or writing] It seems to be no way material, whether a forged instrument be made in such a manner, that if it were in truth such as it is counterfeited for, it would be of validity or not ; and upon this ground it hath been adjudged, that the forgery of a protection in the name of a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. 1 Haw. 184.

Writing sealed] These are large words ; and the making of a false customary of a manor in writing under seal, containing divers false customs, to the disherison of the lord of the manor, and that the same had been allowed and permitted by the lord of the manor, which was also false, was resolved to be within these words *a false writing sealed*. 3 Inst. 171.

Sealed] It is required that the deed, charter, or writing must be sealed, that is, have some impression upon the wax ; for wax, without an impression is not a seal. 3 Inst. 169.

Court roll, or will] Here are two writings which need not be sealed, because they may take effect without any seal, for that they be no deeds ; and no writing can have the force of a deed without a seal. 3 Inst. 170.

Will] If any person which writeth the will of a sick man, inserteth a clause therein concerning the devise of lands, without any direction of the devisor, this is forgery, altho' he did not forge the whole will. 3 Inst. 170.

To the intent that the state of freehold or inheritance of any person, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person in the same may be molested, troubled, defeated, recovered, or charged] E. 4 G. 2. K. and Japhet Crooke. The defendant was convicted on this statute for forging a lease and release. And the indictment sets forth, that Garbut and his wife were seised in fee of certain messuages, lands, and tenements called *Jawick* in the parish of *Clackton* in *Essex*, and that the defendant intending to molest them and their interest in the premises, forged a lease and release as from Garbut and his wife, whereby they are supposed for a valuable consideration to convey to him " all that park " called *Jawick* park in the parish of *Clackton* in *Essex*,

"containing eight miles in circumference, with all the deer, woods, &c. thereto belonging." It was moved in arrest of judgment, that the premises supposed to be conveyed, were so materially different from those which were really the estate of *Garbut* and his wife, which was houses, lands, and tenements; that it was impossible this conveyance ever could molest or disturb them: if it was a true deed, it could not pass their lands at law, for want of a proper description; and though where lands are improperly described, a court of equity will oblige the vendor to convey them by proper words, yet that is only where there is a previous contract for a sale, and they do it as carrying that contract into execution. The court for several terms inclined strongly with the objection; but this term *Raymond Ch. J.* declared that they were all of opinion to over-rule it: for by the words of the act, it is not necessary that there should be a charge or a possibility of a charge: It is sufficient that it be done with that intent, and the jury have found that it was done with intent to molest *Garbut* and his wife in the possession of their lands. Accordingly judgment was given for the king, and the defendant had sentence to undergo the punishment appointed by the act for forging a deed, and the same was executed upon him at Charing-cross. *Str.* 901.

Pronounce or publish] That is, when one by words, or writing pronounceth or publisheth the deed to any other as true. 3 *Inst.* 171.

Knowing the same to be forged] This knowledge may come by two means; either of his own knowledge, or of the relation of another; for if another tell him it is forged, and he publish it afterwards as true, and it prove to be forged indeed, he is in danger of this statute. 3 *Inst.* 171. 1 *Haw.* 187.

But lord *Hale* says, that tho' such a relation may be an evidence of fact to prove his knowledge, yet it is not conclusive; for perchance there might be circumstances of fact, that might make the person relating it, or his relation, not credible: So that the *knowing* must be upon the whole matter left to the jury, upon the circumstances of the case. 1 *H. H.* 685.

Justices of oyer and terminer] Albeit justices of the peace, by their commission, have power to hear and determine felonies and trespasses, yet they are not included under the name of justices of oyer and terminer; for justices of oyer and

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and terminer are known by one distinct name, and justices of the peace by another. 3 *Inst.* 103.

And by the same statute it is further enacted, that if any person, upon his own head or imagination, or by false conspiracy or fraud with any other, shall wittingly, subtilly, and falsely forge or make, or cause or assent to be made and forged any false charter, deed or writing, to the intent that any person may have or claim any estate or interest for term of years in any manors, lands, tenements, or hereditaments, not being copyhold, or any annuity in fee-simple, fee-tail, or for term of life, lives, or years; or any obligation, or bill obligatory, or any acquittance, release, or other discharge of any debt, account, action, suit, demand, or other thing personal; or shall pronounce, publish, or give the same in evidence as true, knowing the same to be false and forged; he shall, on conviction in like manner, pay to the party double costs and damages, and be set on the pillory, and have one of his ears cut off, and be imprisoned for a year. s. 3.

[Obligation or bill obligatory] The forgery of a deed of gift of mere personal chattels, is not within this statute. 1 *Haw.* 186.

And if after verdict, the plaintiff shall release the judgment or execution, or suffer a discontinuance, it shall only discharge his own costs and damages, and not the other punishment. s. 6.

And by the same statute it is further enacted, that if any person shall after conviction offend again in any of the ways abovementioned, he shall be guilty of felony without benefit of clergy. s. 7, 8.

4. Thus stood the matter upon the statute of 5 *El.* Afterwards by many subsequent statutes (several of which were occasional only, and adapted to the particular juncture and circumstances of the time in which they were made, but which are referred to and enforced by the subsequent statutes on the same subject) divers other forgeries were made felony without benefit of clergy for the first offence; and others had other punishments assigned them: Such are these that follow:

It shall be felony without benefit of clergy, to forge or counterfeit.

(1) Any bank bills, or notes, or the seal of the governor and company of the bank of England. 7 & 8 *W. c.* 31. s. 36. 8 & 9 *W. c.* 20. s. 36. 11 *G. c.* 9. s. 6. 12 *G. c.* 32. s. 9.

And in general, any bank note, bank bill of exchange, dividend warrant, or any bond or obligation under the

Forgery:

seal of the bank, or indorsement thereon; or knowingly offering to dispose thereof. 15 G. 2. c. 13. f. 12.

(2) India bonds. 12 G. c. 32. f. 9.

(3) Bonds, receipts, warrants, or seal of the south-sea company. 9 An. c. 21. f. 57. 6 G. c. 4. f. 56. 6 G. c. 11. f. 50. 12 G. c. 32. f. 9.

(4) Exchequer bills; by the several acts which direct the issuing the same.

(5) Any power to transfer stocks. 8 G. c. 22. f. 1. or personating the owners thereof. 4 G. 3. c. 25.

(6) Lottery tickets and orders: by the several lottery acts.

(7) Policy of assurance. 6 G. c. 18. f. 13.

(8) Mediterranean passes. 4 G. 2. c. 18.

(9) Army debentures. 5 G. c. 14. f. 10.

(10) Marriage licence or registry of a marriage. 26 G. 2. c. 33.

(11) Stamps on vellum, parchment, and paper, by the several stamp acts.

(12) Stamps on linen imported. 10 An. c. 19. f. 97. And selling it knowingly with a counterfeit stamp; 100l. and the pillory. *id.*

And by the 9 & 10 W. c. 41. Forgers of seamens wills, or letters of attorney, shall over and above the penalties by former laws, forfeit 200l. with costs; half to the king, and half to him that will sue. f. 3.

5. And besides these (and other like) particular laws, in the 2 G. 2. a general law was made (for five years, and was afterwards revived and made perpetual), by which it is enacted, that if any person shall falsely make, forge, or counterfeit, or cause or procure the same to be done, or willingly aid or assist in the false making, forging, or counterfeiting any deed, will, bond, writing obligatory, bill of exchange, promissory note, indorsement or assignment of any bill of exchange or promissory note, acquittance or receipt for money or goods, with intent to defraud any person; or shall utter or publish the same as true, knowing the same to be forged; — he shall be guilty of felony without benefit of clergy; but not to work corruption of blood, or disherison of heirs. 2 G. 2. c. 25. f. 1, 5

6. And by the 7 G. 2. c. 22. It is further enacted, by way of addition to the foregoing, that if any person shall falsely make, alter, forge, or counterfeit, or willingly act or assist in the false making, altering, forging, or counterfeiting any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill, or other security for

for payment of money, or any warrant or order for payment of money or delivery of goods, with intent to defraud any person; or shall utter or publish the same as true, with intent to defraud any person, knowing the same to be false;—he shall be guilty of felony without benefit of clergy: And this without any saving of the corruption of blood, or disherison of heirs.

Warrant or order for payment of money or delivery of goods]
In the case of *Mary Mitchell*, on this order,

“ Mr. Jefferys.

O&A. 16. 1753.

“ I desire you to let this woman have six yards of ordinary stuff, one pair of stockings, one shift, one apron, one handkerchief, and I will see it all paid for. Witness my hand, *George May*.”

Upon a conference among the judges, nine of them were of opinion, that this writing is not a warrant or order for the delivery of goods within the meaning of the act: That the words *warrant* or *order* do import, that the person giving such warrant or order hath or at least claimeth an interest in the money or goods which are the subject matter of that warrant or order; that he hath or at least assumeth a disposing power over such money or goods; and taketh on him to transfer the property, or custody of them at least, to the person in whose favour such warrant or order is made: And tho’ the present case, and many others of the like kind, may come within the mischiefs intended to be prevented by the act, yet in the construction of acts so penal as this, the old rule of adhering strictly to the letter must not be departed from. And the prisoner was discharged from the indictment which was brought against her for forging of this order. *Fzft.* 119.

Fornication. See *Lewdness*.

Frame work knitters.

1. **A**LL frame work knitted pieces and stockings, made of thread, cotton, worsted, or yarn, or of any mixture therewith, or of any other materials (except such as shall be made of silk only), which shall contain 3 or more threads, shall be marked with the same number of illet-holes, and no more, as there are threads contained

Frame work knitters.

in each piece or pair; and such ilet-holes shall be made distinctly in one direct line, or in the same course, and shall not exceed the distance of three inches from the two extreme ilet-holes; and no such ilet-holes shall be made within the distance of 4 inches of any letter, figure, mark, or other device, which shall be put or woven in any such goods or manufactures; and all such ilet-holes shall be made within 4 inches of the top or end of every such piece or pair; and no ilet-hole, or imitation thereof, shall be made in any frame work knitted piece or pair of stockings, upon any account whatsoever, except as herein before directed. 6 G. 3. c. 29. *f. 1.*

Provided, that nothing herein shall extend to prevent any manufacturers from using remnants, or materials of any sort, in the welt and tops of stockings only, at any distance not exceeding 3 inches from the top, altho' the same shall not contain so great a number of threads as are contained in the legs of such stockings. *f. 2.*

2. And if any master frame work knitter, or master hosier, or any other person, shall make or work, or cause or procure to be made or wrought, any frame work knitted goods, of any the materials aforesaid or any mixture thereof (except such as shall be made of silk only), without being so marked; he shall forfeit the same, and also 5*l.* for each piece or pair of stockings. *f. 3.*

Provided, that the said penalty of 5*l.* shall not extend to any journeyman, apprentice, servant, or person not making such goods on his own account: But such person offending herein shall forfeit not exceeding 40*s.* nor less than 5*s.*; unless he can prove that the goods by him unduly marked were so marked by direction of his master or person by whom he was employed, in which case he shall not be subject to any penalty. *f. 4, 5, 6.*

3. And if any frame work knitter, hosier, or other person, after *Mar. 25, 1768*, shall sell or expose to sale, any of the said goods, not so marked as aforesaid; he shall forfeit the same, and also 5*l.* for each piece or pair. *f. 7.*

Provided, that if the person selling or exposing the same to sale, shall discover the vender or seller thereof, so as he may be convicted; such person shall be discharged. *f. 8.*

4. And one justice where the offence shall be committed (not being a frame work knitter, hosier, or proprietor of frames) may convict the offender, on the oath of one witness: And if the penalties or forfeitures shall not be forth-

forthwith paid, the said justice shall issue his warrant to levy the same by distress; and if no goods, or not sufficient, can be found, such justice shall, on oath made to him by the person who shall have the execution of the warrant, commit the offender to the common gaol of the place where the offence was committed, for any time not exceeding 3 months, unless the penalties and forfeitures shall be sooner paid and satisfied. All which penalties and forfeitures shall be applied, half to the informer, and half to the poor. *f. 9.*

5. Persons aggrieved may appeal to the sessions, giving 10 days notice to the justice; and within 2 days after notice, entering into recognizance before a justice, with two sureties, to try the appeal at such sessions: And the justices there, on due proof of such notice and recognizance, shall hear and determine the same, and may award costs to either party; and their determination shall be final, binding, and conclusive, to all intents and purposes. *f. 10.*

6. Provided, that nothing herein shall extend to abridge or take away any rights or privileges, of the master, wardens, and assistants, of the company of frame work knitters. *f. 12.*

Fraud. See Cheat.

Fruit and fruit trees. See Wood.

Fuel.

BY the 43 *El. c. 14.* All faggots to be sold shall contain in compass, besides the knot of the bond, 24 inches of assize; and every faggot stick within the bond, shall contain full three foot of assize, except only one stick to be but one foot long, to stop or harden the binding.

By the 9 *An. c. 15. f. 1.* All billets (except those made of beech, 10 *An. c. 6.*) that lie exposed in publick places where they are usually bought or sold, shall be assized, and cut or marked in manner following; That is to say,

All billets of what scantling or denomination soever, shall contain in length three foot and four inches, and be of the following dimensions; viz.

Names of the Round billets.	Half round		Quarter cleft		
	in.	qr.	in.	qr.	
A single	7	2	0	0	0 No notch.
A cast	10	2	12	1	12 0 One notch.
A trois	13	0	15	0	14 3 Three in the middle.
cast	15	0	17	1	17 0 Two notches.
3 cast	18	1	21	1	21 0 } One at each end, and one in the middle.
4 cast	21	1	24	2	24 0 4 notches.
5 cast	23	3	27	2	27 0 5 notches.
6 cast	26	0	30	0	29 2 6 notches.
7 cast	28	0	32	2	32 0 7 notches.
8 cast	30	0	34	3	34 0 8 notches.
9 cast	31	3	36	3	36 1 9 notches.
10 cast	33	2	38	3	38 0 10 notches.
11 cast	35	1			
12 cast	36	3			
13 cast	38	1			
14 cast	39	3			
15 cast	41	0			
16 cast	42	2			
17 cast	43	3			
18 cast	45	0			
19 cast	46	1			
20 cast	47	2			

And if they shall not be thus assized and marked, then on information to a justice of the peace, mayor, or other head officer, he shall call before him six good and lawful men of the town, and shall swear them truly to inquire and present, whether the same be of good and sufficient assize; and if they shall present that any of them is not sufficient, the same so being deficient shall be forfeited, and be delivered to the overseers, to be by them distributed to the poor. *id. f. 2.*

And by the 43 *El. c. 14.* The billets shall be measured within six inches of the midst; and the surplussage which shall happen between any two next measures, being above the

the one, and under the other, shall be taken for the benefit of the buyer.

Fuller's earth. See *Wollen Manufacture*.
Furze. Burning it in forests. See *Burning*.

Game.

THE statutes relating to this title are very numerous, and the sense sometimes a little perplexed, so that perhaps upon a view of the whole, it may seem, that about four or five new acts, comprehending the several heads here undermentioned, and repealing all the preceding ones, would conduce to render this branch of our laws more intelligible and useful.

After having first premised (in order to avoid frequent repetitions throughout this whole title) that it is enacted by the statute of the 8 G. c. 19. that where any person for any offence against any law in being at the making of the said act, for the better preservation of the game, shall be liable to pay any pecuniary penalty or sum of money, on conviction before a justice of the peace, the prosecutor may either proceed to recover the same in such manner, or he may sue for the same (before the end of the second term after the offence committed, 26 G. 2. c. 2.) by action of debt, or on the case, bill, plaint, or information, in any court of record at *Westminster*, wherein if he recovers he shall have double costs: Provided, that the offender shall not be prosecuted both ways; and in case of a second prosecution, he may plead in his defence the former prosecution pending, or the conviction or judgment thereupon had. And by the 2 G. 3. c. 19. whereas a moiety of the said penalty by several acts is directed to be applied to the use of the poor of the parish where the offence was committed, by reason whereof inhabitants of the said parish have been disallowed to give evidence; it is enacted, that it shall be lawful for any person to sue for the whole of such penalty to his own use, and if he recovers he shall have double costs; such action to be brought within six months after the offence committed:

(This being premised) I will treat of this subject under the following heads :

- I. Origin of the distinct property in game.
- II. Certain observations concerning forests, chases, parks, and warrens.
- III. Concerning gamekeepers.
- IV. Qualification by estate or degree to kill game: with the punishment of persons unqualified.
- V. Laws for preserving the four footed game in particular.
- VI. Laws for preserving the winged game in particular.
- VII. Laws for preserving the game of fish in particular.

Under which three last heads are comprehended those restrictions which seem to concern all persons whatsoever, whether qualified or not : for altho' a man be qualified to kill game, yet he must kill it in a lawful manner, and not in such ways as tend utterly to destroy it.

I. Origin of the distinct property in game.

Before we take notice of the statutes made for the preservation of the game, it may be requisite to observe how the common law stood herein ; which depends upon the difference made between tame and wild animals.

The tame animals, such as horses, cows, sheep, and the like, are such creatures, as by reason of their sluggishness and unaptness for motion, do not fly the dominion of mankind, but generally keep within the same pastures and limits, and may be easily pursued and overtaken, if by accident they should escape ; and therefore the owner hath the same kind of property in them, as he hath in all inanimate chattels, and for the violation thereof may bring an action of trespass.

The wild animals, such as deer, hares, foxes, and such like, are those, which by reason of their swiftness or fierceness fly the dominion of man ; and in these, no person can have a property, unless they be tamed or reclaimed by him. And as property is the power that a man hath over any other thing for his own use, and the ability that

he

he hath to apply it to the sustentation of his being; when that power ceaseth, his property is lost; and by consequence an animal of this kind, which after any seizure escapes into the wild common of nature, and asserts its own liberty by its swiftness, is no more mine than any creature in the *Indies*, because I have it no longer in my power or disposal.

Hence it appears, that by the common law, every man had an equal right to such creatures as were not naturally under the power of man; and that the mere caption or seizure created a property in them.

By immediate taking and killing them, they belong to such person in the same manner as any other chattels, and cannot be taken from him; since the first seizure and caption was sufficient to vest the property of them in him.

Also by taking and taming them, they belong to the owner, as do the other tame animals, so long as they continue in this condition, that is, as long as they can be considered to have the mind of returning to their masters; for while they appear to be in this state, they are plainly the owner's, and ought not to be violated; but when they forsake the houses and habitations of men, and betake themselves to the woods, they are then the property of any man.

Another way of gaining property in them is, by inclosure; and then the beasts must be understood to be mine, as the profits of the soil it self are; and they can no more be taken and carried off, than any other profits of the land: and therefore if deer be inclosed in a park or paddock, or conies in a field or warren, they become so much a man's own, that no one ought to kill or take them away. And since in this case it is the inclosure that retains them (for take away the inclosure, and they are in their natural liberty); therefore the party is said to have right as he hath to any other profits there inclosed, and a distinct and independent right in every animal.

It is a maxim of the common law, that such goods of which no one can claim any property do belong to the king by his prerogative; and hence all those animals *feræ naturæ*, which come under the denomination of *game*, are styled in our laws *his majesty's game*: and that which he hath, he may grant to another; and consequently another may prescribe to have the same, within such a precinct or lordship. And from hence cometh the right of lords
of

of manors, or others, unto the game within their respective liberties.

And upon this foundation the several acts of parliament are established, for the preservation of these species of animals; for the recreation and amusement of persons of fortune, unto whom the king with the advice and assent of parliament hath granted the same; and to prevent persons of inferior rank, from squandering that time, which their station of life requireth to be more profitably employed. For these restrictions do not take from the common people any right which they ever had; but only grant unto some persons those privileges which before rested solely in the king. 2 *Bac. Abr.* 612, 613.

II. Certain observations concerning forests, chases, parks, and warrens.

Forest, what.

1. A *forest* is a certain territory of woody grounds, and fruitful pastures, privileged for wild beasts and fowls of forest, chase, and warren, to rest and abide there in the safe protection of the king, for his delight and pleasure: which territory of ground so privileged is meered and bounded with unremoveable marks, meers, and boundaries, either known by matter of record, or by prescription; and also replenished with wild beasts of venary or chase, and with great coverts of vert for the succour of the said beasts there to abide: for the preservation and continuance of which, there are particular officers, laws, and privileges belonging to the same, requisite for that purpose, and proper only to a forest, and to no other place. *Manw.* 143.

Note; That *vert* comprehends every thing which bears green leaves in the forest. *Manw.* 146.

Beasts of forest.

2. Beasts of forest are properly hart, hind, buck, hare, boar and wolf; but legally all wild beasts of venary. 1 *Inst.* 233.

Purlicu, what.

3. *Purlicu* comes from the French, *pur*, clear, entire, and exempt; and *lieu*, a place: that is a place, entire, clear, or exempt from the forest: and signifies those grounds which *Henry* the second, *Richard* the first, or king *John* added to their ancient forests, over other mens grounds; and were disafforested by the statute of *charta de foresta*. 4 *Inst.* 303. *Manw.* 242.

But nevertheless the *purlicu* as to some purposes is forest still, and is disafforested as to the particular owners of the land and for their benefit, and not generally to give liberty

liberty to any man to hunt the wild beasts, and spoil the vert. And if those beasts do escape out of the forest into the *purlieu*, the king hath a property in them still against any man, but against the owners of the woods and lands in which they are; and such owners have a special property in them *ratione loci*, but yet so that they hunt them fairly, and not forestall them in their return towards the forest. *Manw.* 292.

But a *purlieu* man may not hunt in every man's lands within the *purlieu*, but in his own lands only; and therefore if he find the beasts of the forest in his woods or lands in the *purlieu*, in such case he hath a property in them against any other man *ratione soli* (the king only excepted.) And if he begins the hunting in his own lands, then by reason of that property he may pursue his hunting thro' any man's woods or lands, so as he doth not enter into any forest, chase, park, or warren. And if he kill the beast in another man's land, and out of such privileged place, he may take and carry away the same by reason of the first property. But if the beast recover the forest, he must call back his dogs, for they are then the king's wild beasts again. And if he do not call back and rebuke his dogs, and they kill the beast in the forest, he is a trespasser, tho' himself never came within the bounds thereof. But if in hunting towards the forest, the dogs fasten on it before it is within the bounds thereof, and the dogs still hanging on are drawn by the deer into the forest, and it is killed there, then by reason of the first property which he had *ratione soli*, and also by the pursuit and possession thereof before it entred the forest, he may lawfully enter and take it. *Manw.* 194.—7.

4. A *chase* (from *chasser*, to chase) is a privileged place Chast, what for receipt of deer and beasts of the forest, and is of a middle nature betwixt a forest and park. It is commonly less than a forest, and not endowed with so many liberties, as officers, laws, courts; and yet is of a larger compass than a park, having more officers and game than a park. Every forest is a chase, but every chase is not a forest. It differeth from a park in that it is not inclosed; for if it is inclosed, it is a good cause of forfeiture; tho' it must have certain metes and bounds, but it may be in other mens grounds as well as in one's own. *Read.* Game. *Manw.* 49.

5. Beasts of chase are the buck, doe, fox, martern, and Beasts of chase. roe. *Manw.* 50.

Park, what.

6. A *park* (from the French, *parquer*, to inclose) is a large parcel of ground privileged for wild beasts of chase by the king's grant, or by prescription. *Read. Game.*

Beasts of park.

7. The beasts of park properly extend to the buck, doe, fox; but in a common and legal sense to all the beasts of the forest. *Read. Game.*

Park to be inclosed.

8. A park must be inclosed; for if it lies open, it is a good cause of seizure into the king's hands, as a thing forfeited: and the owner cannot have an action against those that hunt in his park, if it lies open. *Read. Game.*

Deer shall go to the heir.

9. Deer in a park shall go to the heir, and not to the executor. *1 Inst. 8.*

Warren, what.

10. A *warren* is a place privileged by prescription or grant of the king, for the preservation of the beasts and fowl of the warren; viz. hares, conies, partridges, and pheasants. *Read. Game.*

Need not to be inclosed.

11. A free warren may lie open, there being no necessity of inclosing it. *Read. Game.*

Conies shall go to the heir.

12. Conies in a warren (as hath been said before of deer in the park) shall go to the heir, and not to the executor. *1 Inst. 8.*

Licence to erect.

13. It is not lawful for any man to erect a park, chase, or warren, without a licence under the great seal of the king; because the common law gives no way to matters of pleasure, for that they bring no profit to the commonwealth. *2 Inst. 199.*

But in the case of *K. and Sir William Lowther, M. 12 G.* There was a motion for leave to file an information in nature of a *quo warranto*, against Sir William Lowther, to shew by what authority he had made and set up a warren. But it was denied by the court; because it was of a private nature, and therefore proper to be prosecuted only in the name of the attorney general by information, if his majesty thought fit. And the like motion had been denied before in the case of the Lord *Lisburn*. *L. Raym. 1409. Stra. 637.*

Which of these is the highest franchise.

14. A forest is the highest franchise of princely pleasure; the next to that is a free chase; a chase in one degree is the same as a park, only a park is inclosed, and a chase is always open; the next in degree to a free chase, is a park; and next unto a park, is the franchise of a free warren. *Manw. 148.*

Common in a chase.

15. A person may have common in a chase, as well as in a forest; but a forest is governed by the forest law, and

and a chase and park by the common law. 4 *Infl.* 314.
Manw. 49.

16. If I find a pheasant in my lands, and I let my hawk fly, I may follow the flight into another man's land, by reason of the first property which I had in the pheasant *ratione soli*; and if my hawk kill the pheasant in another man's land, I may enter and take it, by reason of that property and pursuit; and in that case, I shall not be punished as a trespasser for taking and carrying away the pheasant, but only for entering the ground. But if the pheasant fly into a warren (which is a privileged place for birds of warren) and the hawk kill it there, the falconer shall not have the pheasant, but the owner of the warren. And the law is the same, in the cases of all wild beasts of the forest and chase. *Manw.* 193, 196.

17. Notwithstanding the common law allows of the hunting of foxes and badgers, being beasts of prey, in another man's ground, because the destroying of them is looked upon as a publick benefit; yet the digging and breaking the ground to unearthen them is held to be unlawful, and the owner of the ground may maintain an action of trespass in that case. *Cro. Jac.* 321.

18. If conies are hunted out of the warren, or deer out of the park, and the warrener or parker pursue them, he may retake them; for the park or warren is an establishment by the publick, to look after and preserve the game; for all things unoccupied, in which no man hath a civil right, are under the regulation of the publick: now in parks and warrens, officers are established by authority, to have an eye over the game, and to keep it within the boundaries; so that the property is not altered by driving it out of the inclosures, unless it be also out of the pursuit of the officers; for as long as he that is thus trusted doth pursue it, it is not in his natural liberty, but is still belonging to the park or warren. 2 *Bac. Abr.* 613.

III. Concerning gamekeepers.

1. All lords of manors, or other royalties, not under the degree of an esquire, may by writing under their hands and seals (A) authorize one or more gamekeeper or gamekeepers, within their respective manors or royalties. 22 *E. 23 C. 2. c. 25. f. 2.*

2. And may empower him thereby, upon their own manors, to kill hare, pheasant, partridge, or any other game: With power to kill game.

But

But if the gamekeeper shall, under colour thereof, kill or take the same for the use of the lord, and afterwards sell and dispose thereof without the lord's consent; and be convicted, on complaint of such lord, and on oath of one witness, before one justice; he shall be committed to the house of correction for three months, to be kept to hard labour. 5 *An. c. 14. f. 4.*

One gamekeeper in one manor; and to be entred with the clerk of the peace.

3. But no lord of a manor shall make above one person to be gamekeeper within any one manor, with power to kill game. And the name of such person shall be entred with the clerk of the peace where the manor lies; the entry to be made and viewed without fee; and a certificate thereof shall be granted by the clerk of the peace, on payment of one shilling:

And if any other gamekeeper, whose name is not so entred, *who shall not be otherwise qualified* by the laws of this kingdom to kill game, shall kill, sell, or expose to sale any hare, pheasant, partridge, moor, heath game, or grouse; he shall on conviction before one justice, on oath of one witness, forfeit for every offence 5 l. half to the informer, and half to the poor, by distress: for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence four months. 9 *An. c. 25. f. 1.*

Who shall not be otherwise qualified] From these words it seemeth clear, that a gamekeeper who is qualified in his own right to kill game, need not to be entred with the clerk of the peace.

To be also a servant of the lord, or immediately employed for him.

4. And moreover, by the 3 *G. c. 11.* it is further enacted, that no lord of a manor shall make any person to be a gamekeeper with power to kill game, unless such person be qualified by the laws of this realm so to do; or unless such person be truly and properly a servant to the said lord; or be immediately employed and appointed to take and kill the game for the sole use of the said lord, and not otherwise:

And if any person, not being qualified by the laws so to do, or not being truly and properly a servant of any lord of a manor, or not immediately employed and appointed to take and kill the game for the sole use or immediate benefit of the said lord, shall under colour or pretence of any power or authority, deputation or qualification to him granted by any lord of a manor, take and kill any hare, pheasant, partridge, or other game whatsoever; or shall keep or use any greyhounds, setting dogs, hays, lurchers, guns,

guns, tunnels, or any other engine, to kill and destroy the game; he shall forfeit 5*l.* in like manner. *f. 1.*

5. The gamekeeper (so authorised) may search for dogs Gamekeeper's and engines, and seize the same for the use of the lord, power to search. or destroy them. 22 & 23 C. 2. c. 25. *f. 2.*

But it hath been adjudged, that an authority from the lord of the manor is not of itself sufficient for this purpose, but that he ought to have a warrant from a justice of the peace. *Comb. 183. Carpenter and Adams.* At least it may be safe to have such warrant, especially if any houses are to be entered and searched.

For it would give too great a power to the gamekeepers, to leave it in their discretion to search what places they shall think proper, as also to constitute them the judges whether such or such a person is or is not qualified to kill game. Therefore it is best to have a warrant from a justice of the peace, after information and oath of the offence first made.

6. *M. 9 G. 3. Roger & Carter.* The plaintiff *Rogers* Whether he may brought an action against the defendant being a justice of carry a gun out the peace, for taking and carrying away the plaintiff's gun. of the manor. On a verdict for the plaintiff, a new trial was moved for. The case was, The plaintiff, being gamekeeper within the manor of *Ringwood*, in beating for game within the said manor, sprung a covey of partridges, which he shot at within the said manor. They took a second flight, and he pursued them out of the manor, but could not find them. As he was returning to the manor of *Ringwood*, he was met by the defendant about three quarters of a mile distant from that manor, who asked him if he had a qualification. The plaintiff answered, I have a deputation from the lord of the manor of *Ringwood*. The defendant replied, you are now out of that manor; and demanded his gun, and took it from him. The defendant did not shoot out of the manor, but was three quarters of a mile out of the manor, with his gun and dog, with an intention to shoot at game. By the court: The question is, whether the justice had a right to take the plaintiff's gun from him, whilst he was sporting for the purpose of killing game in another manor, out of the manor of *Ringwood*. And we are all of opinion, he had not such right. If he had killed game where he was not a gamekeeper, he might have been convicted in the penalty of 5*l.*; but he was intitled to keep and have dogs, guns, and nets any where, and a gamekeeper's gun cannot be seized either in going to or returning from the manor,

or in any other place; and if gamekeepers were permitted to seize one another's guns, it would create a kind of border war amongst them. And the rule to shew cause why there should not be a new trial was discharged. 2 *Wilson*. 387.

IV. Qualification by estate—or degree to kill game; with the punishment of persons unqualified.

The qualification by estate for killing game, in the reign of K. *Richard* the second, was 40s. a year; in the reign of K. *James* the first it was advanced to 10l. a year, and after that in some instances to 40l. a year; and at last in the reign of K. *Charles* the second it was raised to 100l. a year. Not that the laws have become gradually more severe; but as the value of money decreased, the qualification was raised in proportion, the estate continuing nearly the same; for an estate of 40s. a year in the reign of K. *Richard* the second was not much inferior to an estate of 100l. a year in the reign of K. *Charles* the second. And the penalty for destroying the game was even more severe then than it is now; as I shall shew. For as those ancient laws relating to the game are still in force, and are generally enacted so to be by the subsequent statutes, it will be necessary in order to have a thorough knowledge of this matter to insert them in their order; because the penalties on each being different, the prosecutor or justices may chuse which of them they will convict an offender upon. Thus by the statute of the 5 *An.* hereafter following, if a person not having 100l. a year shall keep dogs or engines to destroy the game, he shall forfeit 5l. but if such person have not 40s. a year, he may upon the statute of R. 2. be punished by a year's imprisonment; and so of the rest: provided that no person be prosecuted upon more than one act for one offence.

40s. a year.

1. The first qualification relating to the game, was in the 13th year of the reign of R. 2. by which it is enacted, that no layman which hath not lands or tenements of 40s. a year, nor clergyman if he be not advanced to 10l. a year, shall have or keep any greyhound, hound, nor other dog to hunt; nor shall use fyrets, hays, nets, hare-pipes, nor cords, nor other engines for to take or destroy deer, hares, nor copies, nor other gentlemens game: on pain of a year's imprisonment. And the justices of the peace

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peace (that is, in their sessions) shall inquire of the offenders in this behalf, and punish them by the pain aforesaid. 13 R. 2. B. 1. c. 13.

2. The next qualification by estate or degree to kill 10l. a year. game, was by a statute in the 1 J. whereby it is enacted that every person who shall keep any greyhound for coursing of deer or hare, or setting dog or net to take pheasants or partridges (except he be seised, in his own right or the right of his wife, of 10l. a year estate of inheritance, or 30l. a year of a lives estate, or goods to the value of 200l. or be the son of a knight or lord, or the son and heir apparent of an esquire) and be thereof convicted, by confession, or oath of two witnesses, before two justices, he shall be committed to gaol three months, unless upon conviction he pay 20 s. to the churchwardens for the use of the poor, or after one month after his commitment he become bound by recognizance with the two sureties before two justices, in 20l. a piece, not to offend again in like manner. 1 J. c. 27. s. 3.

3. The next qualification relates to deer and conies 40l. a year. only, in the 3 J. c. 13. by which it is enacted, that if any person not having hereditaments of 40l. a year, or not worth in goods 200l. shall use any gun or bow to kill any deer or conies; or shall keep any buckstall, nets, or coney dogs (except he have grounds inclosed, and used for the keeping of deer or conies, the increasing of which said conies shall amount to the value of 40 s. a year; or keepers or warreners in their parks, warrens, or grounds); in such case any person having lands or hereditaments of 100l. a year in fee, or for life, in his own right or the right of his wife, may take from such person to his own use for ever such guns, bows, buckstalls, nets, and coney dogs. 3 J. c. 13. s. 5.

4. The next qualification relates to pheasants and partridges only, and is as follows: Every free warrener, lord of a manor, or freeholder seised in his own or his wife's right, of 40l. a year of inheritance, or lives estate of 80l. or worth in goods 400l. may take pheasants and partridges (in the day time only) in his own free warren, manor, or freehold, betwixt Michaelmas and Christmas yearly. 7 J. c. 11. s. 7.

5. The last general qualification by estate or degree to kill game, and which is now most to be regarded, is in 22 & 23 C. 2. c. 25. by which it is enacted, that every person, not having lands and tenements, or some other estate of inheritance, in his own or his wife's right, of the clear yearly

value of 100l. per annum, † or for term of life, or having lease or leases of 99 years, or for any longer term, of the clear yearly value of 150l. (other than the son and heir apparent of an esquire, or other person of higher degree, and the owners and keepers of forests, parks, chases, or warrens, being stocked with deer or conies for their necessary use, in respect of the said forests, parks, chases or warrens) is hereby declared to be a person by the laws of this realm, not allowed to have or keep for himself or any other person, any guns, bows, greyhounds, setting dogs, ferrets, coney dogs, lurchers, hays, nets, lowbels, harepipes, gins, snares, or other engines for the taking and killing of game. s. 3.

[Other than the son and heir apparent of an esquire] Esquire, *escuyer*, *scutarius*, called by the Saxons *schilt knaben* or *knaben* (from whence cometh the word *knave*, which anciently signified a servant), is a name of dignity, next above the common title of gentleman, and below a knight. Heretofore he signified one that was attendant, and had his employment as a servant, waiting on such as had the order of knighthood, bearing their shields, and helping them to horse, or such like. And this title is of that nature with us now, that to whomsoever either by blood, or place in the state, or other eminency, we conceive some higher attribute should be given than that sole title of gentleman, knowing yet that he hath no other honorary title legally fixed on him, we usually style him an esquire, in such passages as require legally that his degree or state be mentioned. *Seld. Tit. of Hon.* 374, 462, 687.

Searching for
dogs and engines.

6. And the gamekeeper, or any other person (authorized by warrant (B) of a justice of the peace) may in the day time search the houses, outhouses, or other places of any such person prohibited by this act to keep or use the same, as upon good ground shall be suspected to have or keep in his custody any guns, bows, greyhounds, setting dogs, ferrets, coney dogs, or other dogs to destroy hares or conies, hays, tramels, or other nets, lowbels, harepipes, snares, or other engines aforesaid, and the same to seize, and keep, for the use of the lord of the manor, or otherwise to cut in pieces or destroy. 22 & 23 C. 2. c. 25. s. 2.

20s. penalty for
keeping dogs and
engines.

7. And if any unqualified person shall have, keep, or use any bows, greyhounds, setting dogs, ferrets, coney

† Upon this it hath been shrewdly remarked, that there is fifty times the property required to enable a man to kill a partridge, as to vote for a knight of the shire. † *Blackst. c. 13.*

dogs,

dogs, hays, lurchers, nets, tunnels, lowbels, harepipes, snares, or any other instruments for destruction of fish, fowl, or other game; and shall not give a good account before a justice, to the satisfaction of such justice how he came by the same, or else shall not in some convenient time (to be set by such justice) produce the party of whom he bought the same, or some other credible person to depose upon oath such sale thereof; he shall forfeit for every offence not under 5 s. nor above 20 s. half to the informer, and half to the poor, by distress; for want of distress, to be committed to the house of correction, not more than one month, nor less than ten days, there to be whipt and kept to hard labour. And if any person so produced or charged with the said offence, shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender be discovered. 4 & 5 W. c. 23. s. 3.

And all lords of manors or their gamekeepers may within their manors oppose and resist such offender, in the night time, in the same manner as if the fact had been committed in any ancient chase, park, or warren inclosed. s. 4.

And no certiorari shall be allowed to remove any conviction, unless the party first become bound to the prosecutor in 50 l. with such sufficient sureties as the justice shall think fit, to pay within a month after the conviction confirmed, or *procedendo* granted, full costs and charges; and in default thereof, the justice shall proceed to the execution of the conviction. s. 7.

8. But by a subsequent statute 5 An. c. 14. If any person, not qualified by the laws of this realm so to do, shall keep or use any greyhounds, setting dogs, hays, lurchers, tunnels, or any other engine to kill and destroy the game, and shall be thereof convicted (C D E) on the oath of one credible witness, before one justice, he shall forfeit 5 l. half to the informer, and half to the poor of the parish where the offence was committed, to be levied by distress (F); for want of distress, to be sent to the house of correction (G) for three months for the first offence, and for every other offence four months.

And any justice, and lord within his manor, may take away such dogs, nets, or other engines, which shall be in the power or custody of any person not qualified. s. 4.

Not qualified by the laws of this realm] In the case of K. and Chandler, T. 12 W. Holt Ch. J. in delivering the

3 l. penalty for
keeping dogs
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opinion of the court, upon a conviction for deer-stealing, said, that in these convictions by justices of the peace in a summary way, where the ancient course of proceeding by indictment and trial by jury is dispensed with, the court may more easily dispense with forms; and it is sufficient for the justices, in the description of the offence, to pursue the words of the statute, and they are not confined to the legal forms requisite in indictments for offences by the common law. *L. Raym.* 581.

And in the case of *Q. and Matthews, T. 10 An.* On a conviction upon this statute, exception was taken, that the conviction reciting the defendant not to be a person so and so qualified and enumerating distinctly the several qualifications in 22 & 23 C. 2. omitted a new qualification allowed by this act, namely, that he was not a person authorised by a lord (or lady) of a manor to kill game for his use. And by the court; Had it been generally laid thus, that he not being a person qualified according to law, and so on, it had been enough; but the qualifications being distinctly and severally mentioned, the omission of one is fatal. *10 Mod.* 26. [But the case was adjourned.]

And in the case of *K. and Marriot, M. 4 G.* There was a conviction for keeping a greyhound; reciting that one *William Toun* came and informed, that the defendant being a person not qualified to keep a greyhound, did nevertheless keep one at such a place, and therewith killed several hares; and that he being summoned did appear, and being asked what he had to say, offered nothing in excuse, and therefore the justice convicted him. It was objected, that the justice should set out, why the defendant is not a qualified person, as that he is not the son of an esquire, nor has 100 l. a year in his own or his wife's right: For he ought not to make himself the sole judge, but give the reasons at large. *Parker Ch. J.* seemed to think the conviction would be good, having followed the words of the statute, and that if the defendant was qualified, he ought to have shewn it before the justice, being summoned for that purpose. *Eyre J.* started an objection, that it was not the justice that had taken upon him to say the defendant was not qualified; but only the witness: for the conviction runs, that the witness being sworn saith, that the defendant *being a person no way qualified* did such a day keep a greyhound; so that it appears, the witness has given the law to the justice, and takes upon himself to judge of the defendant's qualifications, and the

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the justice is only made use of as an instrument, to reduce the opinion of the witness into a conviction. By *Parker C. J.* the *being not qualified* should be the conclusion of the justice, and not the words of the witness; for he ought not to swear generally a man is not qualified, and such a general proof will not be good: This is only an invention, to support a conviction in general terms, which would be bad if the particular facts were alledged. *Pratt J.* Where the justices have a summary jurisdiction, and no appeal lies (as in this case), we must keep them up strictly to the law; and I should be glad if we could make them set out the whole particularly. The case was adjourned. And afterwards *Pengelly* serjeant mentioned two cases, *2.* and *Hayward, E. 12 An.* There it was, *not being qualified, licensed, or authorised to keep any engine,* and it was quashed. The other was the same term, and quashed, because no qualifications were mentioned. And towards the end of the term this conviction was quashed; and the principal reason declared to be, because the witnesses had taken upon themselves, to judge of the qualifications. *Str. 66.*

And in the case of *K. and Hill, H. 12 G.* the defendant was convicted, for unlawfully keeping a lurcher and a gun to kill and destroy the game, *not being qualified by the laws of this realm, so to do.* And the conviction being removed into the king's bench by certiorari, was quashed; because it was only averred generally, that he was not qualified, and did not aver that the defendant had not the particular qualifications mentioned in the statute, as to degree, estate, and the rest. *L. Raym. 1415.*

And in the case of *Bluet and Needs, E. 9 G. 2.* In an action *qui tam* on the statute, it was objected, that it is not sufficient to say he was not qualified, without shewing he had not 100l. a year, nor other estate which makes a qualification. By the court, It is sufficient if the words of the statute be pursued; and the defendant may come in and shew his qualification. Indeed, *convictions* have been quashed for not setting forth what was the want of qualification, because it must be made out before the justice, that he had no such qualification as the law requires; and therefore the justice ought to return, that he had no manner of qualification, before he can convict the defendant. *Comyns, 522.*

And in the case of *K. and Bryan, M. 12 G. 2.* which was a conviction on the gin act, exception was taken, that there was no averment, that it was not sold to be

used in medicine: and the cases on the game act were mentioned, where in convictions it is necessary to exclude all the qualifications for killing game. On the other hand, it was insisted that the reason of that was, because those were in the enacting clause, whereas this about medicine comes in by way of proviso, and is by way of defence to be shewn on the defendant's part. And for that purpose was cited *K. and Theed, M. 11 G.* where in a conviction for obstructing an excise officer on the 8 *An. c. 9.* it was objected, that it not being averred to be in the day, it should have been shewn that there was a constable present, which is made necessary in the night; but it was held to be well, and that its being in the night should have been shewn on the defendant's part. And by the court, This is brought within the general enacting clause: and the true distinction is, where the extenuation comes in by way of proviso, or exception. And the conviction was confirmed. *Str. 1101.*

Finally, in the case of *K. and Jarvis, H. 30 G. 2.* The conviction did set forth, that the defendant did unlawfully keep and use, and had in his custody and possession, one setting dog and setting net, for the destruction of the game; and that he the said *Jarvis* was not then any wise qualified, impowered, licensed, or authorized, by or according to the laws of this realm to kill game. It was moved to quash this conviction. And by lord *Mansfield* Ch. J. It is now settled by the uniform course of authorities, that the qualifications must be all negatively set out: Otherwise the justices have no jurisdiction over the persons killing game, or keeping dogs or engines for the destruction of it. The *obiter* saying in 10 *Mod.* (if it was a book of better authority than it is) would signify nothing, when the determinations are the other way. There is a great difference between the purview of an act of parliament, and a proviso in an act of parliament. In the case of *K. and Mariot*; where the witness swears only generally, it was holden insufficient; And the justices who convict upon the evidence of the witness, can have no other or further ground to go upon, than what the witness swears. In the case of *K. and Hill*, it is the very point established and settled, that the general averment is not sufficient, and that it must be averred that the defendant had not the particular qualifications mentioned in the statute. In the case of *Bluet Qui tam*, and *Needs*; the general averment of the defendant's not being qualified, was holden to be sufficient upon an action, though insufficient

insufficient upon a conviction: The distinction is obvious between an action and a conviction. In the present case, the witness swears generally, that the defendant was not qualified. The justices adjudge it generally, only. The stream can go no higher than the spring head. So the conclusion, which the justices draw from the testimony of the witness, must be as general as that testimony. In the case of *K. and Pickles*, *M. 19 G. 2.* it was laid down as a rule, that the want of the particular qualifications required by the 22 & 23 C. 2. c. 25. ought to be negatively set out in convictions. And the only question there was, whether it was necessary to add the inferred or argumentative qualification, collected from the 5 An. c. 14. but not mentioned in the 22 & 23 C. 2. c. 25. of his not being lord of a manor. *Exceptio probat regulam*: Nor was the general rule at all doubted or disputed in that case. In indictments upon the 8 & 9 W. c. 26. for having a coining press, every thing which shews that the defendant had no authority, must be negatively set out; And so it was done, in the indictment of *Bell*, which was lately argued before all the judges. I take the point to be settled, by the constant tenor of all the authorities; and I think upon very good reason (if there was need to enter into the reason at large, after it has been fully settled already).—Mr. justice *Denison* concurred, and said, it was a clear case, and that it was fully settled and established, that in these convictions, the want of the particular qualifications mentioned in the 22 & 23 C. 2. ought to be negatively set out. If not, the justices have no jurisdiction to convict the defendant as an offender. And the evidence and adjudication ought both of them to be, that he hath not the qualifications which are specified in that act, nor any of them. Indeed you are not obliged to go further than the words of this act of parliament of the 22 & 23 C. 2. and that was the case of *K. and Pickles*. But however, in that case, the present point was established, and taken to be indisputable.—Mr. justice *Foster* also concurred, and said, that on negative acts of parliament, the point is fully settled and established, that the particular qualifications mentioned in the purview of them, must be negatively specified in convictions made upon them.—And by the court unanimously, the conviction was quashed, *Burrow. Mansfield. 148.*

Shall keep or use] *H. 8 G. K. and Filer.* Conviction for keeping a lurcher to destroy game, not being qualified. Exception was taken, that it was not shewn he *used* the dog to destroy game; and it may be he only kept it for a gentleman who was qualified, it being common to put out dogs in that manner. But by the court, The statute is in the disjunctive, *keep or use*; so that the bare *keeping* a lurcher is an offence; and so it was determined in the case of *K. and King, E. 3 G.* which was a conviction for keeping a gun; and it was not doubted by the court, whether the *keeping* was not enough to be shewn, but the only question they made was, whether a gun was such an engine as is within that statute; and in that case a difference was taken, as to the keeping a *dog*, which could only be to destroy the game; and the keeping a *gun*, which a man might do for the defence of his house. And the conviction was confirmed. *Str. 496.*

Use] In the case of *K. and King* aforesaid, *Parker Ch. J.* said, that walking about with intent to kill game, is evidence of *using* the instrument for that purpose. *Sess. C. V. 1. 88.*

Any greyhounds, setting dogs, bays, lurchers, tunnels, or any other engines] *H. 13 G. 2. Hooker and Wilks.* An action was brought on the 8 G. c. 19. for using a *bound* to destroy game. And after a verdict for the plaintiff, the judgment was arrested; for the statute of the 5 *An. c. 14.* has not the word *bound*, and the words *other engines* come after *nets*, and are applicable only to inanimate things. And this being a penal law, cannot be extended. The statute of the 22 & 23 *C. 2. c. 25.* has indeed general words *or any other dogs to destroy game*; but this is not a conviction on that statute. *Str. 1126.*

Nor indeed could it have been a conviction on that statute, for any penalty in certain for killing and destroying the game; for the statute of the 22 & 23 *C. 2.* doth not inflict a general penalty upon persons unqualified who shall kill and destroy the game; but only declares, who shall or shall not be deemed unqualified; and gives power to lords of manors and their gamekeepers to seize the dogs, nets, and other engines of such unqualified persons. But if the defendant did kill the game, and had the same in his custody; he might have been prosecuted for the penalty of 20 s. for such offence, by the statute of the 4 & 5 *W.* hereafter following.—But then the consequence of all this will be, that it is not penal barely

to keep a hound on this statute of the 5 An. but if any unqualified person shall do so, the gamekeepers or others, authorized by a justice's warrant, may seize and keep or destroy the same, by the aforesaid statute of the 22 & 23 C. 2.

So in the case of *Reason and Lisle*, T. 11 G. 2. On an action upon the statute, the plaintiff declared, that the defendant did keep and used a dog to destroy the game. It was objected, that he ought to have expressed what sort of dog; for it might be a mastiff, or a lap dog, which might chance to kill game; and the statute only mentions greyhounds, setting dogs, and lurchers; and this being a penal law, shall not be extended by equity. And of this opinion was the court. And judgment was arrested. *Comyns*, 576.

Any other engines] T. 11 G. 2. *K. and Gardiner*. It was moved to quash a conviction, for unlawfully having and keeping a gun, being an engine or instrument for destroying the game. And it was urged, that this is no sufficient charge within this act, or any other of the laws relating to the game: for it is not said, that the defendant used the gun for the destruction of game; and a gun is not an instrument so far appropriated to killing game, as that it is criminal for a person to have one in his custody only: And it would have been altogether as well, if it had been said that the defendant had in his custody a cane for the destruction of the game, which may possibly be used for that purpose. The only offences intended to be prevented by the act are, the keeping of engines appropriated to, and which can only be used in, the destroying of game. A gun is an engine, not for killing the game, but for the defence of a man's house. And the whole court were clearly of opinion, that this conviction is not good. For (as they argued) if the statute is to be construed so largely, as to extend to the bare having of any instrument, that may possibly be used in destroying game, it will be attended with very great inconvenience; there being scarce any tho' ever so useful, but what may be applied to that purpose. And tho' a gun may be used in destroying game, and when it is so, doth then fall within the words of the act; yet as it is an instrument proper, and frequently necessary to be kept and used for other purposes, as the killing of noxious vermin, and the like, it is not the having a gun, without applying it in the destruction of game, that is prohibited by the act: but otherwise

otherwise it is of lurchers, harepipes, and such like, which are peculiarly fitted or disposed for killing game. The bare keeping of these for the purpose of killing game, is sufficient to convict an offender, and it will be incumbent upon the defendant himself to prove, that he kept them for other purposes. And the conviction therefore was quashed. After which, *Strange* solicitor general said that in the case of *K. and King, E. 3 G.* Lord *Macclesfield* said, that he was in the house of commons when this act was made, and he himself objected to the inserting of the word *gun* therein, because it might be attended with great inconvenience. *Andr. 255. Sess. G. V. 2. 204. Str. 1098.*

And shall be thereof convicted] *H. 6 G. K. and Johnson.* Conviction for keeping a gun, not being qualified. Exception was taken, that here was not a reasonable summons; for it was made on the fifth of *October*, to appear the same day, which might be impossible upon account of distance, or the summons being served late, and his witnesses might not be got together on so short a warning: then it is to appear at the parish aforesaid, whereas there are two parishes mentioned before; so the man may have gone to one, whilst they were convicting him at the other. It was answered, that the defendant appeared at the time and made defence, so that cures all defects in the summons. And by the court, The answer is right. *Str. 261.*

H. 5 G. 2. K. and Heber. On a rule to shew cause, why an information should not be granted against the defendant *Mr. Heber*, a justice of the peace, for convicting two persons, *Hargrave* and *Lancaster*, for killing game not being qualified; the complaint in relation to *Hargrave* was, that the defendant sent his warrant for him, by which he was arrested, without any previous information upon oath; in relation to *Lancaster*, the complaint was, that he happening to be present at the time *Hargrave* was convicted, the defendant took that opportunity of convicting him also, without giving him any previous summons, by which he might prepare himself for his defence. The court (the chief justice being absent) were very clear, that an information ought to go against the defendant for his behaviour in relation to *Lancaster*; for they said, it was a most known rule of common justice, that no man ought to be convicted of an offence, till he has previous notice given him of the charge, that he may be prepared to put in

in his answer to it. Accordingly the rule, as to him, was made absolute. As to *Hargrave*, judge *Probyn* thought, that the rule, with respect to him also, ought to be made absolute. He said, a warrant deprives a man of his liberty; and therefore a summons ought only to issue, and not a warrant, without an information upon oath. The other two judges did not think this a sufficient cause for granting an information. And therefore the rule, with respect to *Hargrave*, was discharged.— In this case, the court would not proceed to make a rule to shew cause, until the convictions were removed thither by certiorari: for, they said, if there was no conviction, there ought to be no information; and if there was a conviction, this ought to appear by the record. 2 *Barnardist.* 34, 77, 101.

On the oath of one credible witness] *H. 9 G. K.* and *Gage*. The defendant was convicted for using a greyhound in killing hares. Exception was taken to the conviction, that the statute hath only given the justices jurisdiction to convict upon the oath of one or more credible witnesses, whereas this was upon his own confession, which it was insisted the justices had no power to take. But by the court, The conviction must be confirmed. The intent of mentioning the oath of one witness, was only to direct the justices, that they should not convict on less evidence: suppose the confession had not been before the justices, but before two witnesses who had sworn it; that would be convicting him on the oaths of witnesses, and yet the evidence would not be so strong as this. Here the justices had a better evidence, than the oath of any single witness; and it is a monstrous thing to say, that a better sort of evidence shall not do. *Str.* 546.

Credible witness] *M. 2 G. 2. K.* and *Stone*. A conviction was quashed, because the informer was the witness; divers convictions having been quashed for the same reason before. *L. Raym.* 1545. The same adjudged in the case of *K. and Blaney*, *T. 11 G. 2. Andr.* 240. And in the statute of the 2 G. 3. c. 19. it is recited, that in prosecutions on the act of 8 G. c. 19. in the courts at *Westminster*, where a part of the penalty is given to the poor of the parish, the inhabitants of such parish had been disallowed to give evidence; and therefore in that case, to remedy the same, the act gives the whole penalty to the prosecutor, in order to enable the inhabitants to give evidence,

Before

Game.

Before one justice] *H. 12 G. K. and Buck.* It was moved, to quash an indictment for killing a hare, this not being a matter indictable, the statute appointing a summary proceeding before justices of the peace; and a case was cited *K. and James, T. 1 G.* where an indictment for keeping an alehouse was quashed, because the statute of the 3 *C. c. 3.* had directed a particular remedy. And by the court, The indictment must be quashed. *Str. 679.*

Shall forfeit 5 l.] *T. 10 An. 2. and Matthews.* On a conviction, exception was taken, that the person was charged with so many 5 l. as he had killed hares in the same day. And the court was of opinion, that the offence for which the statute gave the forfeiture, was the keeping dogs and engines, and not killing the hares. If a man not qualified goes a hunting, and kills never so many hares on the same day, he would forfeit but one 5 l. for it is but one offence; but if a man keeps dogs, and goes a hunting several days, and kills hares, if it was thus laid, that he such a day kept dogs and killed, and then again such a day, by laying thus severally, the offence is severed, and he shall forfeit 5 l. for each offence. 10 *Mod. 26.*

So in the case of *Marriot and Shaw, E. 4 G.* where the defendant was convicted, that upon such a day he kept and used a greyhound to kill and destroy the game at such a place, that on the same day he kept and used a greyhound to kill and destroy the game at another place, and so at a third place, and killed several hares at the said several places; it was adjudged by the court, that this being all done on the same day, was only one offence; for this statute does not give 5 l. for every hare; but only says, if any unqualified person shall keep or use any greyhounds, or the like, to kill and destroy the game, he shall forfeit 5 l. *Comyns. 274.*

To the poor of the parish where the offence was committed] In some places a man may stand in one parish (or county), and shoot into two or three: in such case, the place where the offence was committed is, where the party stood when he shot, and not where the object was which he shot at. *Show. 339. M. 3 W. K. and Alsop.*

By distress] *T. 9 G. K. and Burchet.* The court ordered an attachment (unless cause shewn) against the town clerk of *Guildford*, and a defendant convicted on the game act,

act, for granting and suing out a replevin of goods distrained for the penalty. But on shewing cause the next term, when *Eyre J.* only was present, he discharged the rule, because it was only a contempt to the inferior jurisdiction of the justices, and in that case the king's bench never interposes. *Str.* 567.

But in the case of the king against the sheriff of *Leicestershire* and others, *M. 2 G. 2.* An attachment was moved for against the defendants, for replevying three horses, which were seized as forfeited upon a justice's warrant, they being driven in a waggon contrary to act of parliament. The court tho' they would not grant an attachment, yet made a rule to shew cause why an information should not go. And on shewing cause, the court thought there was enough to excuse the sheriff; but granted it against *Parsons* whose horses were seized, because he knew that the justice had granted this warrant; but it did not appear that the sheriff did. *1 Barnardist.* 110.

And in the case of *K. and Monkhouse*, *E. 16 G. 2.* The court granted an attachment against the under-sheriff of *Cumberland*, for granting a replevin of goods distrained on a conviction for deer-stealing. *Str.* 1184.

For want of distress, to be sent to the house of correction *T. 12 G. Hill and Bateman.* Before *Raymond Ch. J.* at *Westminster.* The defendant *Bateman*, being a justice of the peace, had convicted the plaintiff for-destroying game, and though (as it was proved) the plaintiff had effects of his own, which might have been distrained, which were sufficient to answer the penalty he had incurred, yet the defendant sent him immediately to *Bridewell*, without endeavouring to levy the penalty upon his goods: and an action of trespass and false imprisonment being brought against *Bateman* for this commitment, the chief justice was of opinion, that the action well lay. *Str.* 710.

And [no] certiorari shall be allowed to remove the conviction or other proceedings on this act, unless the party convicted shall before the allowance thereof become bound (H) to the prosecutor in 50*l.* with such sureties as the justice shall think fit, to pay full costs and charges in 14 days after the conviction [confirmed], or procedendo granted. And in default thereof, the justice shall proceed in execution of the conviction in such manner as if no certiorari had been awarded. *5 An. c. 14. s. 2.*

Note;

Note ; The word [no] is inserted instead of the words [if any] which are in the act, since that word seemeth necessary to make up the sense ; and the word [confirmed] is added for the like reason. And indeed there have been too many inadvertencies in the drawing up of this act ; for there is false grammar in no fewer than six places, besides other mistakes.

Search for game;
with 20 s. penal-
ty for having it.

9. And the constable, authorised by a justice's warrant, shall enter into and search (in such manner and with such power as in case where goods are stolen, or suspected to be stolen) the houses, outhouses, or other places belonging to such houses of suspected persons not qualified: And if any hare, partridge, pheasant, pigeon, fish, fowl, or other game, shall (upon such search, or otherwise) be found, the offender shall be carried before a justice ; and if such person do not give a good account how he came by the same, such as shall satisfy the said justice, or else shall not in some convenient time, to be set by the justice, produce the party of whom he bought the same, or some other credible person to depose upon oath such sale thereof, he shall be convicted by the said justice of such offence, and upon such conviction shall forfeit for every hare, partridge, pheasant, fish, fowl, or other game any sum not under 5 s. and not exceeding 20 s. half to the informer, and half to the poor, by distress ; for want of distress, to be committed to the house of correction not more than one month, nor less than ten days, there to be whipt and kept to hard labour. 4 & 5 W. c. 23. f. 3.

Or other game] Rabbits killed in a private warren, are not game within this act. L. Raym. 151.

For every hare, fish, fowl, or other game] These words are very penal.

And if any person so produced, or charged with the said offence, shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender be discovered. id. f. 3.

And no certiorari shall be allowed to remove any conviction, unless the party first become bound to the prosecutor in 50 l. with such sufficient sureties as the justice shall think fit, to pay within a month after the conviction confirmed, or procedendo granted, full costs and charges ; and in default thereof, the justice to proceed to the execution of the conviction. id. f. 7.

10. If any higler, chapman, carrier, innkeeper, victualler, or alehousekeeper, shall have in his custody or possession or shall buy, sell, or offer to sell any hare, pheasant, partridge, moor,

beath-game,

Carriers and
others having
game in their
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heath-game or grouse, unless such game in the hands of such carrier be sent up by some person qualified; (or, if any person whatsoever, whether qualified or not, shall sell, expose, or offer to sale any hare, pheasant, partridge, moor, heath-game, or grouse, 28 G. 2. c. 12.) he shall be carried before a justice where the offence is committed (I); and being convicted thereof (in three months after the offence) on view, or oath of one witness, he shall forfeit for every hare, pheasant, partridge, moor, heath-game, or grouse, the sum of 5*l.* half to the informer, and half to the poor, by distress (K): for want of distress, to be committed (L) to the house of correction for the first offence three months, and for every other offence four months. 5 An. c. 14. s. 2.

And no certiorari shall be allowed to remove the conviction or other proceedings, unless the party convicted shall before the allowance thereof, become bound to the prosecutor in 50*l.* with such sureties as the justice shall think fit, to pay full costs in 14 days after the conviction confirmed, or procedendo granted. And in default thereof the justice shall proceed in execution of the conviction, in such manner as if no certiorari had been awarded. 5 An. c. 14. s. 2.

And if any hare, pheasant, partridge, moor, heath-game, or grouse, shall be found in the shop, house, or possession of any poulterer, salesman, fishmonger, cook, or pastry cook, or of any person not qualified in his own right to kill game, or intitled thereunto under some persons so qualified, it shall be deemed an exposing thereof to sale. 9 An. c. 25. s. 2. 28 G. 2. c. 12.

Found in the shop] This must be understood of proof that it was found. 2. and George. 6 Mod. 57.

And any justice of the peace, and lord within his manor, may take away any such hare, pheasant, partridge, moor, heath-game, or grouse, or any other game, from any such higler, chapman, innkeeper, victualler, or carrier, or any other person not qualified, which shall be found in his custody or possession. 5 An. c. 14. s. 4.

And any person that shall destroy, sell, or buy any hare, pheasant, moor, heath-game, or grouse, and shall in three months make discovery of any higler, chapman, carrier, innkeeper, ale-housekeeper, or victualler, that hath bought or sold, or offered to buy or sell, or had in their possession any hare, pheasant, partridge, moor, heath-game, or grouse, so as any one shall be convicted; such discoverer shall be discharged of the pains and penalties hereby enacted for killing or selling such game, and shall receive the same benefit as any other informer. 5 An. c. 14. s. 3.

Inferior tradesmen killing game.

11. And whereas great mischiefs do ensue by inferior tradesmen, apprentices and other dissolute persons, neglecting their trades and employments, who follow hunting, fishing and other game to the ruin of themselves, and damage of their neighbours, therefore if any such person shall presume to hunt, hawk, fish, or fowl (unless in company with the master of such apprentice duly qualified); he shall not only be subject to the other penalties, but if he be prosecuted for trespass, in coming on any person's land, and be found guilty, the plaintiff shall not only recover damages against him, but full costs. 4 & 5 W. c. 23 §. 10.

For no man can come upon another man's ground to kill game, without being liable to an action of trespass. 2 Bac. Abr. 613.

But if he is qualified to kill game, and the damage found shall be under 40 s. he shall in such case: pay no more costs than damages. *id.*

But an unqualified person so trespassing, shall pay full costs.

T. 30 & 31 G. 2. *Buxton & Mingay*. In the common pleas. The plaintiff declared, that the defendant being an inferior tradesman, viz. an apothecary, such a day committed a trespass in hunting in the plaintiff's close. On a trial at the assizes, a verdict was found for the plaintiff, with 1 s. damages, and 40 s. costs; subject to the opinion of the court, upon a case made, which states, that it was proved at the trial, that the defendant at the time of the trespass was a surgeon and an apothecary, and not qualified to kill game; that on such a day he was hunting with divers others not qualified, in company with a person who was properly qualified to kill game, and committed a trespass in the plaintiff's close. The question for the consideration of the court was, whether upon the facts above stated the defendant shall be deemed an inferior tradesman within the meaning of the statute. This case was argued several times at the bar; and the judges were equally divided. For the plaintiff it was argued, that amongst tradesmen, no line can be drawn with respect to who are superior and who are inferior, but they are all upon an equal footing as tradesmen; but that the line which the legislature intended to draw was, between those that were qualified and those that were not: so that in this respect every tradesman is inferior who is not qualified. For the defendant it was urged, that every case of this kind ought to be determined on its own particular circumstances, and left to the jury, whether

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whether the defendant is an inferior tradesman or dissolute person within the statute. The court being equally divided, no rule in this case was made. 2 *Wilson* 70. [Indeed, the word *inferior* seems to be applicable rather to the man than to the trade; so as that two persons of the same trade may be one a superior and the other an inferior tradesman.]

12. By the yearly mutiny acts, if any officer or soldier Soldiers. shall, without leave of the lord of the manor under his hand and seal, destroy any hare, coney, pheasant, partridge, pigeon, or other fowl, poultry, or fish, or his majesty's game, and be convicted thereof, on oath of one witness, before one justice; every officer so offending shall forfeit 5l. to the poor, and the commanding officer upon the place, for every offence committed by any soldier under his command, shall forfeit 20s. in like manner. And if, upon conviction by the justices, and demand thereof made by the constable or overseers of the poor, he shall not in two days pay the said penalties, he shall forfeit his commission.

13. Here next followeth the statute of the 33 *H. 8.* The statute of c. 6. concerning guns: by which it is enacted as follows; 33 *H. 8.* concerning guns.

(1) No person, except he in his own right, or in the right of his wife, or some other to his use, have lands, tenements, fees, annuities, or offices, to the yearly value of 100l. shall shoot in any cross bow, hand-gun, hagbut, or demihake, otherwise than as hereafter is expressed; on pain of 10l. to be levied and disposed of in any of the three ways hereafter mentioned.

(2) And no person, of what estate or degree soever, shall shoot in, carry, keep, use, or have in his house or elsewhere, any hand-gun, not being in the stock and gun of the length of one yard; or any hagbut or demihake, not being in the stock and gun of the length of three quarters of a yard; on the like pain of 10l.

(3) And every person having 100l. a year as above, may seize every such cross bow; and every such hand-gun, hagbut, and demihake being so deficient in length; and he may keep the cross bow to his own use; but he shall in 20 days after seizure break and destroy the hand-guns, hagbuts, and demihakes, on pain of 40s. in like manner, for every gun so seized, and not broken and destroyed; and the same so broken and destroyed he may keep to his own use.

(4) And no person not being qualified as above, shall carry or have in his journey, going or riding in the king's highways or elsewhere, any cross bow bent, or gun

charged, or furnished with powder, fire, or touch for the same, except in time and service of war; on pain of 10l. in like manner.

(5) And no person shall shoot with any hand-gun, demihake, or hagbut, at any thing at large, within any city, borough, or market town, nor within a quarter of a mile of the same, except it be at a butt or bank of earth in place convenient, or for defence of his person or house; on pain of 10l. in like manner.

(6) And no person shall command his servant to shoot in any cross bow, hand-gun, hagbut, or demihake, at any deer, fowl, or other thing, except only at a butt or bank of earth, or in time of war; on pain of 10l. in like manner.

(7) But all gentlemen, yeomen, and servingmen of lords, knights, esquires, and gentlemen; and all inhabitants of cities, boroughs, and market towns, may shoot with any hand-gun, demihake, or hagbut of the length as above, but not under, at any butt or bank of earth, in place convenient.

And every such lord, knight, esquire, gentleman, and inhabitant of cities, boroughs, and market towns, may have and keep in their houses any such hand-gun, hagbut, or demihake, of the length aforesaid, to the intent only to use or shoot in the same at a butt or bank of earth.

And every person inhabiting in a house two furlongs from any city, borough, or town, may keep and have in his house, for the only defence of the same, hand-guns, hagbuts, and demihakes, of the length abovementioned; and may use and exercise to shoot in the same at any butt or bank of earth near to his house, and not otherwise.

And except makers and sellers of the same, having them for that purpose only, and being of the length above.

Also this act shall not extend to persons inhabiting within five miles of the sea; so that they shoot not at any deer, heron, shoveldar, pheasant, partridge, wild swine, or wild elk.

Also this act shall not extend to servants carrying the same by their masters command, so that they shoot not at any game.

Nor to any owner of a ship for having or keeping them, of what length soever, to be used in the ship only.

(Nor to persons licensed by the sessions to shoot in hand-guns or birding-pieces, at crow, chough, pye, rook, ring-dove,

ring-dove, jey, or smaller birds, for hawks-meat only; so as they shoot no game, and so that they shoot not within 600 paces of a hernery, nor within a hundred paces of a pigeon house, nor in another man's park, forest, or chase. 1 J. c. 27. f. 7.

And except the sheriff, who may carry a gun in the execution of his office. 5 Co. 72.)

(8) And if any person see or find any one offending or doing contrary to this act, he may arrest, and bring or convey him to the next justice of the county where he is found offending; who shall upon *due examination and proof* thereof made before him, by his discretion have full power to commit (M) the offender to the next gaol, there to remain till such time as the said penalty or forfeiture shall be truly contented and paid by the said offender; half to the king, and half to the first bringer or conveyor of the said offender to the justice.

Which *due examination and proof* aforesaid, is intended not to be by a jury, but by witnesses. 1 Ventr. 33.

Mr. Dalton says, soasmuch as in this case the justice hath the whole matter committed to himself, and the offenders remain convict upon his examination and proof of witness made before him; therefore he ought to be circumspect in his examination, as also in his mittimus; and farther to make a record (N) of the matter, in writing under his hand, and also to send the estreat of it into the exchequer, whereby the king's duty may be levied. Dalt. c. 47.

In the conviction, it is not sufficient to say generally that he had not 100 l. a year, but the time must be certainly alledged, namely, that the defendant on the day and year aforesaid (when the offence was committed) had not 100 l. a year. 3 Mod. 280.

And upon such conviction, it hath been adjudged, that a writ of error doth not lie. 1 Ventr. 33.

(9) Also the justices in sessions may inquire of, hear and determine the said offences, so that no less fine than 10 l. be assessed upon *presentment* and conviction, to be levied in such case to the king's use only.

And this may also be upon *indictment*. Dalt. c. 47.

And if the jury shall wilfully conceal any the said offences, the court may charge another jury to inquire of such concealment; and if it be so found, the first jury shall forfeit to the king every one 20 s.

(10) Also the leet may inquire of, hear and determine the same; in which case, half the forfeiture shall upon *presentment*

presentment and conviction be levied to the king's use; and one moiety of the other half to the owner of the leet, by distress or action of debt; and the other moiety to him that will sue in any of the king's courts.

And if the jury shall wilfully conceal an offence, the steward may charge another jury to inquire of the concealment; and if it be found, the first jury shall forfeit 20 s. each; half to the owner of the leet, by distress or action of debt; and half to him that shall sue in any of the king's courts.

(11) But no person shall be prosecuted but within a year, if it is by the king; and within half a year, if by any other person. †

V. Laws

† This statute of the 33 H. 8. c. 6. is undoubtedly in force, and consequently may be put in execution; nevertheless it seemeth now to be obsolete, the object thereof being a matter not in any use, and the effect of it with respect to the game being superseded as it were by the several subsequent statutes. The original intention was solely for the encouragement of the use of the long bow. And the progress of the matter was as follows:—By the statute of the 19 H. 7. c. 4. it was thus enacted; The king our sovereign lord considering right well, that in the time of his most noble progenitors shooting in long bows hath been much used in this his realm, whereby honour and victory hath been gotten against outward enemies, and the realm greatly defended, and much the more dread among all christian princes by reason of the same; which shooting is now greatly decayed in this realm, forasmuch as now of late the king's subjects greatly delight themselves in using of *cross bows*, whereby great destruction of the king's deer, in forests, chases, and parks, daily is had and done, and shooting in long bows little or nothing used, and likely in short space to be lost and utterly decayed, to the great hurt and infeebling of this realm, and to the comfort of our outward enemies, if remedy be not therefore in due time purveyed; wherefore our said lord the king, willing that his subjects in this realm shall use their long bows after the laudable custom used in time of his most noble progenitors, to the great honour, strength, and defence of this his realm, by the advice of the lords spiritual and temporal and commons in this present parliament assembled, hath ordained and enacted, That no person, without the king's special licence under his placarde, signed and sealed with his privy seal or signet, shall occupy or shoot in any *cross bow* (unless he shoot out of an house for the lawful defence of the same), except he be a lord, or have lands of freehold of 200 marks a year; on pain to forfeit the same, with the apparel thereto belonging, to him who shall seize and

V. Laws for preserving the four footed game in particular.

Which said laws, as hath been said, do seem to concern all persons whatsoever, whether qualified or not.

Now the four footed game, or the game of beasts, are of three kinds, *viz.*

I. Deer

and take the same.—By the 3 H. 8. c. 13. the qualification was raised to 300 marks a year.—Afterwards, when guns came in use, it was enacted by the 6 H. 8. c. 13. as follows: Where the king's subjects daily delight themselves in shooting in *cross bows*, whereby shooting in long bows is the less used, and divers good statutes for reformation of the same have been made, and that notwithstanding many persons not regarding the penalties of the said statutes, use daily to shoot in *cross bows* and *hand guns*, whereby the king's deer, and of other lords of this his realm are destroyed, and shall be daily destroyed more and more, unless remedy therefore be provided; it is enacted, that no person shall shoot in any *cross bow* or *hand gun*, on pain of forfeiting the same, and also 10 l. unless he have by the year to the value of 300 marks, with power to the king to license persons as before.—And the like was enacted by two other statutes in that king's reign (14 & 15 H. 8. c. 7. and 25 H. 8. c. 17.) with some small variations, not material, repealing the former statutes and the licences granted thereupon, and giving the king power to grant new ones; so that they seem to have been intended chiefly for the sake of bringing money into the exchequer by the renewal of licences.—And last of all cometh this statute of the 33 H. 8. c. 6. reciting, Where in the parliament holden in the 25th year of the king's most gracious reign, one statute was made for the avoiding and eschewing of shooting in *cross bows* and *hand-guns*; since the making whereof divers evil disposed persons, not only presuming the violation of the said statute, but also of their malicious and evil disposed purposes have committed divers detestable and shameful murders, robberies, felonies, riots, and routs, with *cross bows*, little short *hand guns*, and little *haquebuts*, to the great peril and fear of the king's subjects; and also divers keepers of forests, chafes, and parks, and divers gentlemen, yeomen, and serving men, now of late have laid apart the good and laudable exercise of the long bow, which always heretofore hath been the surety, safeguard, and continual defence of this realm of England, and an inevitable dread and terror to the enemies of the same; and now of late the said evil disposed persons have used, and do daily use, to ride and go in the king's highways, and elsewhere, having with them *cross bows* and little *hand guns*, ready furnished with quarrels, gun powder,

I. Deer.

II. Hares.

III. Conies.

I. Of deer.

There have been many laws from time to time enacted against deer stealers; which being not so much altered, as

gun powder, fire, and touch, to the great peril and fear of the king's subjects; for reformation thereof, it is enacted (as is above set forth).

Subsequent to this, an act was made, 2 & 3 Ed. 6. c. 14. which is curious enough, to shew the progress of fire arms applied to the destruction of the game; the substance of which is this: Whereas an act was made in the 33d year of H. 8. for some liberty to shoot in hand guns, haques, and haquebuts, by which act nevertheless it was provided, that no person should shoot in any of the abovesaid pieces, but at a bank of earth, and not to any deer or fowl, unless the party might dispend 100 l. a year, forasmuch as the said act having been devised, as it was then thought, for necessary exercise, tending to the defence of the realm, is grown since to the maintenance of much idleness, and to such a liberty, as not only dwelling houses, dove coats, and churches, be daily damaged by the abuse thereof, by men of light conversation, but also there is grown a customable manner of shooting of *hailshot*, whereby an infinite sort of fowl is killed, and much game thereby destroyed, whereby also the meaning of the said statute is defrauded, for that the said use of *hailshot* utterly destroyeth the certainty of shooting, which in wars is much requisite; it is therefore enacted, that no person, under the degree of a lord of parliament, shall shoot in any hand gun within any city or town at any fowl or other mark, upon any church, house, or dove-coat, nor shall any person shoot in any place any *hailshot*, or any more pellets than one at one time; on pain of 10 l. and imprisonment for 3 months.

This act continued in force until the 6 & 7 W. c. 13. which enacts, Whereas by an act made in the 2 & 3 Ed. 6. it was ordained, that no person under the degree of a lord of parliament should shoot in any place any *hailshot*, or any more pellets than one at one time, on pain of 10 l. and imprisonment for 3 months; which act, however useful in those days, hath not for many years last past been put in execution, but became useless and unnecessary; yet nevertheless several malicious persons have of late prosecuted several gentlemen, qualified to keep and use guns, upon the said act; for remedy thereof, be it enacted, that the said act shall be and is hereby repealed.

But the aforesaid act of the 33 H. 8. c. 6. continues, in force, altho' the object thereof doth now exist.

inforced

inforced by the subsequent statutes, except only in increasing the penalties, it may be proper to insert them all in their order; and the rather, because an offender, as it seemeth, may still be convicted upon any one of them; and it is generally provided, that such conviction upon one statute, shall be as a bar to all the rest.

1. The first statute is in the 3 Ed. 1. c. 20. which enacts, that if *trespassers in parks* be thereof attained at the suit of the party, great and large amends shall be awarded according to the trespass, and they shall have three years imprisonment, and after shall make fine at the king's pleasure (if they have whereof,) and then shall find good surety that after they shall not commit the like trespass: and if they have not whereof to make fine, after three years imprisonment, they shall find like surety; and if they cannot find like surety, they shall abjure the realm. And if none sue within the year and day, the king shall have the suit.

Three years imprisonment and fine.

Trespassers.] This is, when a man either chafeth in a park, or endeavours to kill some of the game thereof. 2 Inst. 199.

In parks] This act, because it is very penal, is to be understood, not of a nominal park erected without warrant, but of a lawful park only, whereunto three things are required, 1. A liberty, either by grant or prescription. 2. Inclosure, by pale, wall or hedge. And 3. Beasts savages of the park, 2 Inst. 199.

2. The next statute is that intitled *De malefactoribus in parcis*, 21 Ed. 1. ft. 2. which enacts, that if any forester, or parker, shall find any trespassers wandring within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to stand unto the peace, but do continue their malice, and disobeying the king's peace do flee, or defend themselves with force and arms, altho' such forester, parker, or their assistants, do kill such offenders, they shall not be troubled upon the same.

They may be lawfully raised.

3. The next statute makes hunting by night, or in disguise, and concealing the same, felony; but within the benefit of clergy; as follows:

By night, or disguised, and concealing the same, felony.

When *information* shall be made, of any unlawful hunting, in any *forest or park*, by night, or with painted faces, to any of the king's counsel, or to a justice of the peace, of any person to be suspected thereof, he may make a warrant to take and arrest the person, and to have him

before the maker of the warrant, or any other of the said counsel, or justices of the peace; who may by their discretion examine him of the said hunting, and of the said doers in that behalf: And if the same person wilfully conceal the said huntings, or any person with him defective therein, that then the same concealment be, against every such person so concealing felony. But if he then confess the truth, and all that he shall be examined of and knoweth in that behalf, then the said offences of hunting by him done, shall be but trespasss fineable at the next general sessions. And if any rescous or disobedience be made to any person having authority to execute the warrant, by any person the which so should be arrested, so that the execution of the warrant thereby be not had, then the said rescous and disobedience shall be felony. And if any person shall be convicted of any such huntings, with painted faces, vizors, or otherwise disguised, to the intent they should not be known, or of unlawful hunting in time of night, then the same person so convicted, to have like punishment as he should have if he were convicted of felony. 1 H. 7. c. 7.

When information shall be made] This information must shew at least just cause of suspicion; and it must be taken in writing, because it is the ground of the warrant. 3 Inst. c. 21.

In any forest or park] This doth not extend to a chase, nor to any forest or park in use or reputation, which are not so in law. 3 Inst. c. 21.

Wilfully conceal] Lord Coke, who is a lover of the common law, and is jealous of every violation of it, seemeth to be out of humour with this act, and calls it an ill-penned law. He observes it is the first that was made for the making of any hunting felony, against that excellent and equal branch of *charta de foresta, nullus de cætero vitam vel membra amittat pro venatione nostra*; and that this, and other old statutes concerning the forest, are called the good old laws and customs, and commanded to be observed; and therefore this new act is too severe for wild beasts, whereof there can be no felony at the common law. And therefore the judges (he says) have made a favourable construction of it, as is set forth in the following notable report:

M. 19 & 20 El. in the king's bench. Gerrard the queen's attorney general (who was a grave and reverend man) said openly, that it had been resolved by the judges upon this statute, that if a man in the night, or by day
with

with painted face, do hunt as above, and being examined according to the act doth *conceal* it, yet this is upon the construction of the whole act no felony. For the first clause concerning the concealment, and the last clause concerning the fact itself, must be coupled or joined by construction together; that is to say, If any person be convicted of such hunting with painted face, or of unlawful hunting in the night, this conviction must be upon not guilty pleaded; which the judges expounded to be the concealment intended in the first branch; for they held that it ought to be a judicial concealment, and not an extrajudicial concealment before one of the counsel or a justice of the peace, which may lie in averment, so as before it be felony he must be convicted of such hunting upon not guilty pleaded first, and after such conviction, then he must be indicted again upon the whole matter, that he feloniously did conceal it, against the form of the statute; and if the offender upon the first indictment confesseth the indictment, then it is such a judicial confession as this act intendeth, and no felony within this statute.

This he says, he heard the attorney report, and did then observe it; which concurring with his opinion, he thought good to publish, and the rather because in *Lambard's* justice, amongst his precedents of indictments, there is an erroneous precedent (he says) of an indictment of felony for the concealment upon the examination before a justice of the peace. And upon the whole he thinks it the clearest way to make it trespass, and not felony; which the party may do at his pleasure. 3 *Inst.* c. 21.

But lord *Hale* says, that this seems a difficult exposition; for upon his arraignment for the hunting, he only answers to that indictment, and is not examined touching others; and besides, if he be indicted for the hunting, if there be evidence to convict him of the fact, he is convicted of felony before the indictment for concealment come; and if there be not evidence to convict him of the principal, how shall there be evidence to convict him of the concealment? 1 *H. H.* 659.

4. The next statute is in the 19th year of the same king, by which it is enacted, That no person, not having any park, chase or forest of his own, shall keep or cause to be kept any net, called deer-hays or buck-stalls, on pain of 10l. a month; to him who shall sue by action of debt: or, the justices in sessions may call before them any

Penalty of keeping nets for deer.

any persons suspected, and examine them; and if they be found in default, may commit them till they have found surety for payment of the forfeiture to the king; and the justices shall have the tenth part of such forfeiture for their labour. 19 H. 7. c. 11.

Penalty of stalking to deer.

5. And by the same statute, no person shall stalk, nor cause any other to stalk, with any bush, or beasts, to any deer, except in his own ground, chase, forest, or park, without licence of the owner, master, or keeper; on pain of 10l. in like manner.

10l. or treble damages.

6. The next act is in 5 El. c. 21. which is re-enacted with some additions by the 3 J. c. 13. which is altered and explained by the 7 J. c. 13. the substance of all which put together is as follows;

If any person shall by night or by day, wrongfully or unlawfully break or enter into any park impaled, or any other several grounds inclosed with wall, pale, or hedge, and used and kept for the keeping, breeding, and cherishing of deer, and wrongfully or unlawfully shall hunt, drive, or chase out, or take, kill, or slay any deer therein; and be thereof convicted at the assizes or sessions, upon indictment, bill of complaint, information, or otherwise, at the suit of the king or of the party, he shall for every offence pay 10l. to the party grieved, or treble damages and costs, at the election of the party, to be assessed by the court; and shall find sufficient sureties for his good abearing for seven years, or continue in prison till he finds such sureties.

But on satisfaction of treble damages, the party may release the sureties within the seven years. Or if the person shall acknowledge his offence in open sessions, and that he is sorry therefore, and satisfy the party grieved, the court may discharge the recognizance.

But this shall not extend to any park or inclosed ground, hereafter to be made and used for deer, without the king's licence.

Guns, bows, and nets to kill deer, may be seized.

7. And by the said statute of the 3 J. c. 13. it is also enacted, that if any person not having lands or hereditaments of 40l. a year, or not worth in goods 200l. shall use any gun or bow to kill deer; or shall keep any buck-stall or engine, unless he have grounds inclosed for keeping of deer; any person having 100l. a year may seize the same to his own use.

Selling deer.

8. Another statute is 1 J. c. 27. which enacts, that every person who shall sell, or buy to sell again, any deer, shall, on conviction at the assizes, or sessions, or before

two

two justices out of sessions, forfeit for every deer 40s. half to him that will sue, and half to the poor.

9. The next act is in 13 G. 2. c. 10. by which it is ^{20l.} enacted, that if any person shall unlawfully course, kill, hurt, or take away any red or fallow deer, in any forest, chase, purlieu, paddock, wood, park, or other ground where deer are or have been usually kept, without consent of the owner, or person chiefly intrusted with the custody thereof; or shall be aiding or assisting therein; and shall be convicted thereof by confession, or oath of one witness, before one justice, in six months after the offence committed; he shall forfeit for every offence 20l. half to the informer, and half to the owner of the deer, by distress; for want of sufficient distress, to be committed to the house of correction for six months to hard labour, or to the common gaol for one year; and not to be discharged thence, till he hath given sureties for his good behaviour for a year next after his enlargement.

Note; This act doth not appear to be limited to grounds inclosed only; altho' the statute of the 10 G. 2. c. 32. hereafter following seems to suppose it so.

10. The next act is the 3 W. c. 10. on which most of ^{30l.} the convictions have been since that time; which (together with the alterations and additions made in and to the same by the 5 G. c. 15. 9 G. c. 22. and 10 G. 2. c. 32. is as followeth:

If any person shall unlawfully course, hunt, take in toyls, kill, wound, or take away, any red or fallow deer, in any forest, chase, purlieu, paddock, wood, park, or other ground, inclosed where deer are, have, or shall be usually kept, without the consent of the owner or person chiefly intrusted with the custody thereof; or shall be aiding or assisting therein; and shall be convicted (O) thereof, in 12 months after the offence, by confession, or oath of one credible witness, before one justice where the offence shall be committed, or the party apprehended: every such person so offending by unlawful coursing or hunting only, when no deer is taken, wounded, or killed, shall forfeit for every such offence 20l. and in case any deer shall by such person or persons be wounded, taken in toyls or killed, such person or persons shall respectively forfeit for every such deer 30l. to be levied by distress (P) upon the goods and chattels of the offender by warrant of such justice; one third to the informer, one third to the poor, and one third to the owner of the deer: for want of sufficient distress, such person shall be imprisoned (Q) for a year, and set in the pillory an hour on some market day in the next adjoining town to the place where the offence

effence was committed, by the chief officer of such market town, or his under officer. l. 2.

Unlawfully] Where a man kills deer in pursuance of a supposed right which he has, he is not within the intent of this, nor of the other acts against deer stealing. L. Raym. 584.

In any forest, chase, purlieu, paddock, wood, park, or other ground inclosed, where deer are, have, or shall be usually kept] M. 13 G. 2. K. against Calcut and Monk. There was a conviction for deer stealing in a purlieu of the forest. Whereunto exception was taken, that it was not averred, that deer were usually kept in the purlieu, whereas by the statute that seems to be required. To this it was answered, That such averment could not extend to a purlieu, for a purlieu is a place where by law deer cannot be kept, it being disafforested as well with regard to all others as the owner; and the oath of the ranger is, to drive deer out of the purlieu into the forest: Secondly, that the averment as to forests, chases, and purlieus, is not made necessary by the act, for the words *where deer are usually kept* extend only to ground inclosed; else the words *other ground* will make it necessary to aver, that the forest was inclosed, which is not the case in any part of England. And by the court, The answer is right in both respects. Another objection was, that it did not appear, but that the defendant was owner of the purlieu; in which case he had a right to chase the deer off his ground. But by the court, That would be matter of defence, and should be shewn on his part, according to the resolution (beforementioned) in the case of K. and Bryan. So the conviction was confirmed. Str. 1119.

Or other ground inclosed, where deer are, or shall be usually kept] T. 1. An. Q. and Moore. A conviction for killing deer was quashed, because it said only that he killed deer in a certain place where deer had been usually kept, and did not say inclosed. L. Raym. 791.

Aiding or assisting therein] On a conviction, the question was, whether he who lent dogs to another to hunt; was aiding and assisting therein, to wit, in the hunting: And by the opinion of three judges he was; but Holt. Ch. J. was of a contrary opinion, for this being a penal law, shall be construed strictly; and if so, then he who lent the dogs could not be assisting in the act of hunting, and so not

within

within the words of the statute, *aiding and assisting therein*, tho' he might be assisting thereunto. 2 Salk. 542, 543.

And shall be convicted thereof] There ought to be a summons in this, and in all other like cases, to warrant a conviction; and that ought to give a reasonable time to appear in: but if the defendant hath appeared, it cures the want of a summons. 1 Salk. 181, 383.

H. 3 G. K. and Simpson. The defendant was convicted for deer stealing; and the conviction set forth, that he had been summoned to appear before the justices; but it did not appear he ever was before them. Exception was taken to this, that as no appeal lies in this case, the justices should not have proceeded in the absence of the party, especially where it may end in a corporal punishment, as it may do here, for want of a distress. And at another day, on consideration, *Parker Ch. J.* delivered the resolution of the court: We are all of opinion, the offender may be convicted, without appearing. The statute is silent as to the method of proceeding, and the law of *England*, it is true, in point of natural justice, always requires the party charged with any offence to be heard before he be condemned in judgment; but that rule must have this exception, unless it is through his own default: were it otherwise, every criminal might avoid conviction. The law being so, the magistrate is bound to give some opportunity to the party to appear; and if upon such notice, he neither comes, nor sends a sufficient excuse, the magistrate may proceed to judgment. If this was not to be allowed, the consequence would be, that the offender would escape unpunished, because he would never appear purposely to be convicted; and that would be to make the execution of the law depend on the will of the offender.

There was another order of conviction, whereby it appeared, that the defendant made an attorney to defend for him: And by the court; We think that it is certainly good; for the offender may entrust his defence with another, and the justices cannot enforce him to appear in person. And the orders were confirmed. *Str. 44.*

In 12 months after the offence.] A conviction being returned on a certiorari, the objection was, that the conviction appeared to be a year after the day of the information; but it was held sufficient that the information be prosecuted within a year after the fact; for that is a good commencement

commencement of the suit, and it is from that the computation is made in all such cases. 1 Salk. 383.

But by the black act hereafter mentioned, this prosecution may be commenced at any time within three years after the offence. 9 G. c. 22. s. 13.

Oath of one credible witness] This must not be upon the single oath of the *informer*; and a conviction was quashed for that reason; divers convictions having been quashed for the same reason before. L. Raym. 1545. Str. 316.

In the case of *K. against Wilford and Savage, M. 5 G.* The defendants were severally convicted of deer stealing on this statute. Exception was taken that the persons on whose testimonies the defendants were convicted, appeared to be of the same parish where the facts were committed, and so might be intitled to part of the penalty. But it was over-ruled by the court; because the justice hath averred them to be *credible witnesses*, and it doth not appear that they were of the poor of the parish. *Viner. Deer stealing. A. 24.*

So in the case of *K. and Mitter, H. 7 G. 2.* The offence was committed in the parish of *Barking*. The witness was an inhabitant of the same parish. It was objected, that part of the penalty being given to the poor of that parish, the witness was interested, and therefore incompetent. It was answered, that if indeed the penalty had been given to the overseers of the poor of the parish, the objection might have had some weight in it, for then it would have been for the benefit of the rich as well as of the poor; but here it is given merely by way of bounty to the poor, and the rest of the inhabitants can have no benefit by it. And the court was of opinion, that the objection was fully answered; and the conviction was confirmed. 2 Barnardist. 383.

Every such person so offending] A conviction of two persons was removed, wherein judgment was given, that each should forfeit 30l. It was objected, that there ought to be but one 30l. forfeited. But not allowed: For the words of the act are, that they shall *respectively forfeit* 30l. and this penalty is not in nature of a satisfaction to the party grieved, but a punishment on the offender; and crimes are several, tho' debts be joint. 1 Salk. 182. *H. 10 An. 2. against King.*

To be levied by distress] Sale of the goods is not mentioned here in the statute; yet nevertheless where the law gives

gives a distress for a publick benefit, the officer may sell.
1 Salk. 379.

By warrant of such justice] Altho' the constable is not appointed to execute this warrant, nor is so much as named in the clause; yet he is bound to obey the warrant, and is indictable if he does not: but he need not return the warrant it self, for that is not required, and it may be necessary to keep it for his own justification: but he must either return that, or certify what he has done upon it. 1 Salk. 381.

One third to the informer, &c.] The penalty need not be distributed by the conviction; viz. 10 l. to the informer, 10 l. to the poor, and 10 l. to the party grieved; for the judgment in such cases seldom mentions a distribution: it is enough to say, that he is convicted, and hath forfeited 30 l. according to the statute. 1 Salk. 383.

For want of sufficient distress] If the justice finds there is nothing to distrain, then he must make a record thereof, and make an adjudication for corporal punishment; but the offender is not to pay part, and suffer corporally for the residue. L. Raym. 546, 1195, 6.

H. 6 G. K. and Whitlock. The defendant was committed for want of distress; and the warrant set forth, that it had been certified to the justice by the constable, that there was not sufficient distress. It was objected that there ought to have been a warrant to levy, and a return to that, that there was no distress; it may be, the constable only told him so. But by the court, The warrant is well enough; for the word *certified* imports it to be in a legal manner. Str. 263.

And then the act goes on thus:

Any owner of deer in any inclosed ground, or any person acting under him, may resist such offenders in the same manner as if the fact had been committed in an ancient chase or park. 3 W. c. 10. s. 5.

And as to the case of venison's being found in a man's possession, it is further enacted, that the constable, by a justice's warrant, shall enter into and search (R) in such manner and with such power as in case where goods are stolen or suspected to be stolen, the houses, outhouses, or other places belonging to such houses of suspected persons; and if any venison or skin of any deer, or toys, shall there be found, he shall apprehend the offender, and carry him before a justice; and if such person do not give a good account

account how he came by the same, such as shall satisfy the said justice, or else shall not in some convenient time to be set by the said justice, produce the party of whom he bought the same, or some other credible witness to depose upon oath such sale thereof, he shall be convicted by the said justice of such offence, and thereupon shall be subject to the forfeitures and penalties hereby inflicted for the killing of one deer. 3 *W. c. 10. f. 3.*

And by the 9 *G. c. 22.* commonly called the Black act, any justice may issue his warrant for this purpose; and if any venison or skin of any deer, shall be found in the custody of any person, and it shall appear that such person bought such venison or skin of any one who might be justly suspected to have unlawfully come by the same, and doth not produce the party of whom he bought it, or prove upon oath the name and place of abode of such party, then the person who bought the same shall be convicted of such offence by any justice of the peace, and shall be subject to the penalty above inflicted for killing one deer. 9 *G. c. 22. f. 11, 17.*

After conviction, the constable or prosecutor may detain in custody the offender, if he shall not presently pay the money due on conviction, during such reasonable time as a return may be conveniently made to the warrant of distress, so as such detainer exceed not two days. 3 *W. c. 10. f. 4.*

And moreover, the person convicted, before he shall be discharged out of custody, shall become bound to the person against whom the offence shall be committed, in 50*l.* for his future good behaviour, and that he shall not offend in like manner; and upon refusal shall be committed to gaol until the bond be given: And if he shall be afterwards convicted of any offence in the said statute of 3 *W. c. 10.* the bond shall be forfeited, and the penalty be recovered with full costs in any court at *Westminster*, over and above the forfeiture, and to be distributed as the forfeitures. 5 *G. c. 15. f. 4.*

All this being done, the justice shall certify a true copy of the conviction under his hand and seal, to the next quarter sessions, there to be kept among the records. 10 *G. 2. c. 32. f. 8.*

And no *certiorari* shall be allowed to remove any conviction, or other proceeding thereupon, unless the party, before the allowance thereof be bound to the prosecutor in 50*l.* with such sureties as the justice shall think fit, to pay in a month after the conviction confirmed, or a *procedendo*

granted, full costs and damages, to be ascertained upon his oath; and at the same time become also bound to the justice with sufficient sureties, in the penalty of 60 l. with condition to prosecute the *certiorari* with effect, and to pay to the justice the forfeitures due by the conviction, or to render to the justice the person convicted within a month after the conviction shall be confirmed, or a *procedendo* granted: and in default thereof, the justice may proceed to the execution of the conviction. 3 *W. c.* 10. *f.* 6. 5 *G. c.* 15. *f.* 1.

Or, after delivering to the justice the rule by which the conviction shall be confirmed, he may proceed, as if a *procedendo* had been granted. 5 *G. c.* 15. *f.* 2.

H. 6 G. K. and Whitlock. The defendant being brought up from *Newgate* by *habeas corpus*, it appeared upon the return, that he was committed for deer stealing, as the statute of the 3 *W. c.* 10. directeth, not having sufficient distress; and that this was done by one justice under the statute of the 5 *G.* And exception was taken to the warrant, that it doth not appear, the conviction was ever confirmed in this court, or that the rule for confirmation was delivered to the justice, and therefore the justice could not proceed to execution: for the statute gives to the justice a jurisdiction after confirmation, which he had not before; and therefore he ought to shew every thing requisite to found his jurisdiction upon. But by the court, We take notice of our own records, and by them it appears that the conviction is confirmed: and the statute doth not give the justice a new jurisdiction, but only revives his old one, which was suspended by the *certiorari*. And the defendant was remanded. *Str.* 263.

Moreover, by the said act of 5 *G. c.* 15. it is enacted, that if any keeper or other officer of any park, or place where deer are usually kept, shall be convicted on the said statute of the 3 *W.* for killing or taking away any red or fallow deer, or being aiding therein, without consent of the owner, or person chiefly intrusted with the custody thereof; he shall forfeit 50 l. for each deer, to be distributed as the other forfeitures; to be levied by distress: for want of distress, to be imprisoned for three years, and be set in the pillory two hours on some market day in the next town to the place where the offence was committed, by the chief officer of such market town, or his under officer. *f.* 5.

And it is further enacted, that if any person shall at any time pull down or destroy, or cause to be pulled down or

destroyed, the pale or walls of any park, forest, chase, purlieu, paddock, wood, or other ground inclosed, where any red or fallow deer shall be then kept, without the consent of the owner, or person chiefly intrusted with the custody thereof; and shall be convicted thereof before one justice, by confession, or oath of one witness, he shall suffer the said forfeitures of the 3 *W.* for killing one deer. 5 *G. c.* 15. *f.* 6.

And any person sued for any thing done either on the 3 *W. c.* 10. or on this act, may plead the general issue; and if he recovers, shall have treble costs. 5 *G. c.* 15. *f.* 3.

Transportation
for offences in
places inclosed.

11. Next follows the statute of the 5 *G. c.* 28. by which it is enacted, that if any person shall enter into any park, paddock, or other inclosed ground where deer are usually kept, and wilfully wound or kill any red or fallow deer there, without consent of the owner of the ground, or of the person intrusted with the custody thereof, or shall be aiding or assisting therein; and shall be convicted thereof before the judge of assize, upon indictment, by verdict or confession,—he shall be transported for seven years:

But not to be prosecuted likewise on any of the former acts, all which nevertheless shall be of force.

Felony without
benefit of clergy.

12. Thus stood the laws, till the great insolencies of the *Waltham Blacks* made a further provision necessary, by that famous act of the 9 *G. c.* 22. from them usually called the *Black Black*, which hath created more new felonies than any other statute whatsoever: which, with regard to the subject before us, doth enact as follows:

If any person or persons, being armed with swords, fire arms, or other offensive weapons, and having his or their faces blacked, or being otherwise disguised, shall appear in any forest, chase, park, paddock, or grounds inclosed with any wall, pale, or other fence, wherein any deer have been or shall be usually kept, or shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer: or if any person or persons (whether armed and disguised or not) shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, fed or kept in any places in any of the king's forests or chases, which are or shall be inclosed with pales, rails, or other fences; or in any park, paddock, or grounds inclosed, where deer have been or shall be usually kept; or shall forcibly rescue any person being lawfully in custody of any officer or other person, for any

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the said offences; or shall by gift or promise of money, or other reward, procure any to join him or them in any such unlawful act: every person so offending, being thereof lawfully convicted (in any county in *England*) shall be guilty of felony without benefit of clergy; but not to work corruption of blood, nor forfeiture of lands or goods.

Concerning the manner of bringing the offender to justice, and other particulars relating thereto, it is proper to refer from hence to the title *Black Act*; where these offences, together with the other offences in the said act, are treated of more at large.

13. It is to be observed, that this act of the 9 G. c. 22. extends only to killing and wounding deer in places *inclosed* (except the offender be withal armed and disguised); and therefore the said offence in places *uninclosed* remains as it was before the making the said act: But by the statute of 10 G. 2. c. 32. a second offence against the former acts is made transportation: Which, after having recited, that whereas the abovesaid act of the 9 G. c. 22. extends not to hunting or taking deer in open forests or chases, but only in such as are inclosed, and offences in uninclosed places are only punishable by the 3 W. c. 10. which inflicts only a pecuniary punishment, which is not sufficient to deter offenders,—doth therefore enact, That if any person who shall be convicted of unlawfully coursing, hunting, taking in toils, killing, wounding, or taking any red or fallow deer, in any open or uninclosed forest or chase, where deer are usually kept, shall be guilty of a second offence of the like nature, and shall be thereof lawfully convicted on indictment or information; he shall be transported for seven years; and if he returns within the time, he shall be guilty of felony without benefit of clergy. And the clerk of the peace shall at the request of the prosecutor, or of any person on his majesty's behalf, certify to the assizes a transcript under his hand and seal, briefly and in few words containing the effect and tenor of the first conviction (kept amongst the records); which certificate shall be sufficient proof of the first conviction. 10 G. 2. c. 32. s. 7, 8.

Transportation
for a second of-
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14. Moreover, by the said act of the 10 G. 2. c. 32. If any person armed shall come into any forest, chase, or park, wherein deer are usually kept, (whether inclosed or not) with an intent to course, hunt, take in toils, kill, wound, or take away any red or fallow deer, and

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shall there unlawfully beat or wound any keeper or page of any such forest, chase or park, their servants or assistants in the execution of their office, and be thereof lawfully convicted; he shall be transported for seven years. 10 G. 2. c. 32. s. 9.

Destroying cover for deer.

15. Whereas the burning and destroying of goss, furze, and fern in forests and chases, doth destroy the cover necessary for the preservation of the deer and game there; therefore if any person not having a right or legal licence to do the same, shall set fire to, burn, or destroy (or be aiding therein) any goss, furze, or fern in any forest or chase, without consent of the owner or person chiefly intrusted with the custody of such forest or chase, or of some part thereof, and being brought before a justice shall be thereof convicted by confession, or oath of one witness, or on view of the justice, he shall forfeit not exceeding 5l. nor less than 40s. half to the informer, and half to the poor; if not forthwith paid, to be levied by distress; and if no sufficient distress can be found, the justice shall commit him to the common gaol, for any time not exceeding three months, nor less than one month. 28 G. 2. c. 19. s. 3.

II. Of hares.

It is to be remembred, that I have already, under the third part of this title, treated of those particulars, which are common to this with other species of the game, as to destroying the same by unqualified persons; I here take notice of such things as belong to hares only, and which for the most part seem generally to concern all persons, whether qualified or not.

Tracing in the snow.

1. No person of what estate, degree, or condition he be, shall trace, destroy, and kill any hare in the snow, with any dog, bitch, bow, nor otherwise. And the sessions or leet may inquire hereof; and after inquisition found, they shall for every hare so killed, cess upon every offender 6s. 8d. to be forfeited to the king, if in the sessions; and to the lord of the leet, if in the leet. 14 E. 15 H. 8. c. 10.

And by the 1 J. c. 27. Every person who shall trace or course any hares in the snow; shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless he pay to the churchwardens for the use of the poor, 20s. for

for every hare; or after one month after his commitment become bound by recognizance with two sureties in 20 l. apiece, before two justices, not to offend again in like manner. *f. 2.*

2. And by the said last mentioned act, every person ^{Snares and hares} who shall at any time take or destroy any hares, with ^{pipes.} harepipes, cords, or any such instruments or other engines; shall forfeit for every hare 20s. in like manner.

1 J. c. 27. f. 2.

And by the 22 & 23 C. 2. c. 25. *f. 6.* If any person shall be found or apprehended setting or using any snares, harepipes, or other like engines, and shall be thereof convicted, by confession, or oath of one witness, before one justice, in one month after the offence; he shall give to the party injured such damages, and in such time, as the justice shall appoint, and shall pay down presently to the overseers for the use of the poor, such sum not exceeding 10s. as the justice shall appoint; which if he shall not do, the justice shall commit him to the house of correction not exceeding one month.

3. By the 9 An. c. 25. If any person whatsoever shall ^{Killing hares in} take or kill any hare in the night time; he shall on con- ^{the night.} viction before one justice, on oath of one witness, forfeit 5 l. half to the informer, and half to the poor, by distress; for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence four months. *f. 3.*

And by the 10 G. 3. c. 19. If any person shall wilfully, upon any pretence whatsoever, take, kill, or destroy, or use any gun, dog, snare, net, or other engine for taking, killing or destroying any hare in the night, between one hour after sun-setting, and one hour before sun-rising; and shall be convicted thereof, on the oath of one witness, before one justice; he shall, for the first offence be committed to the common gaol or house of correction, for any time not exceeding six calendar months, nor less than three: And if any person, having been once convicted of such offence, shall afterwards be guilty of the like offence, and be thereof convicted in manner aforesaid; he shall, for every such offence, be committed to the common gaol or house of correction, for any time not exceeding twelve calendar months, nor less than six: And shall also, within three days from the time of his commitment, either for the first or any other offence, be once publicly whipped in the town where such gaol or house of correction shall be, between the hours of twelve

and one of the clock in the day. And for the more easy conviction of offenders, the justice may cause the conviction to be drawn in the following form, or in any other form to the like effect :

Be it remembred, That on the — day of — in the year of our lord — A. B. is convicted before me C. D. one of his majesty's justices of the peace for the — of — (specifying the offence, and time and place when and where the same was committed, as the case shall be.) Given under my hand and seal the day and year aforesaid.

Provided, that if any person shall think himself aggrieved by any thing done in pursuance of this act, he may appeal to the next general quarter sessions, within 4 days after the cause of complaint shall have arisen, giving 14 days notice at least, in writing, to the person or persons whose acts are complained against; and within two days after such notice entring into recognizance before a justice with two sureties, conditioned to try such appeal, and abide the order of, and to pay such costs as shall be awarded by the justices at such quarter sessions: And the justices there, on proof of the notice and recognizance, shall hear and finally determine the appeal, and award such costs to the parties appealing or appealed against, as they shall think proper. And no order or other proceedings relating to the premises, shall be quashed for form, or removed by Certiorari or any other writ into any of his majesty's courts of record at Westminster.

[Note, this act in the statutes at large stands next unto the *Dog act*, and is drawn up pretty much in the same form, but is more explicit with respect to the *whipping*; but with regard to the *appeal*, there is the same perplexity and indecision.]

Killing on Sundays.

4. By the same act of the 10 G. 3. c. 19. If any person shall, on a Sunday, take, kill, or destroy, or use any gun, dog, snare, net, or other engine, for taking, killing or destroying, any hare; and shall be convicted thereof upon the oath of one witness before one justice, he shall forfeit not exceeding 30 l. nor less than 20 l; and if not forthwith paid, the justice shall cause the same to be levied by distress; and to be distributed half to the informer and half to the poor: And if no sufficient distress can be had, the justice shall commit him to the common gaol or house of correction, not exceeding six calendar months, nor less than three. With the like form of conviction, and power of appealing, as for killing the same in the night.

5. Every

Game.

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5. Every person who shall shoot at, kill, or destroy any hare, with any gun or bow, shall on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay to the churchwardens for the use of the poor 20 s. for every hare; or after one month after his commitment become bound by recognizance with two sureties before two justices in 20 l. apiece, not to offend again in like manner. The recognizance to be returned to the next sessions.

1 J. c. 27. s. 2.

6. Every person who shall sell, or buy to sell again, any hare, shall, on conviction at the assizes or sessions, or before two justices out of sessions, forfeit for every hare 10 s. half to the poor, and half to him that will sue.

1 J. c. 27. s. 4.

7. If any manner of persons shall hunt with spaniels in any ground where corn or other grain shall then grow (except in his own ground), at such time as any eared corn or grain shall be growing thereon, and before it be shocked or cocked, and be thereof convicted at the assizes, sessions, or leet; he shall forfeit 40 s. to the owner of the corn; and if not paid in ten days, he shall be imprisoned for one month. And any justice may examine the offender, and bind him over to appear at the next sessions to answer the offence, and to pay the penalty, or receive the punishment. 23 El. c. 10. s. 5.

8. By the Black Act before mentioned, if any person, armed and disguised, shall appear in any warren or place where hares are usually kept, or unlawfully rob any such warren; or (whether armed and disguised or not) shall rescue any person in custody for either of the said offences, or procure any to join with him in any such unlawful act; he shall be guilty of felony without benefit of clergy.

III. Conies.

1. If any warrener shall find any trespassers wandring within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to stand unto the peace, but do flee, or defend themselves; altho' the warrener, or his assistant, do kill such offenders, they shall not be troubled upon the same. 21 Ed. 1. s. 2.

R. 4.

2. When

Hunting in a warren by night or disguised.

2. When information shall be made of unlawful hunting in a warren by night, or with painted faces, to any of the king's counsel, or to a justice of the peace, of any person suspected, he may make a warrant to bring such person before himself or any other of the said counsel or justices; and if such person shall conceal the said hunting or any of his accomplices, it shall be felony; but if he confesseth, it shall be but trespass finable at the sessions.
1 H. 7. c. 7.

Hunting by night in a warren inclosed.

3. If any person shall in the night time enter into any grounds inclosed, and used for keeping of conies, and hunt, drive out, take, or kill any conies; he shall, on conviction at the suit of the king or of the party, at the assizes or sessions, on indictment, bill, information, or otherwise, be imprisoned 3 months, and pay to the party grieved treble damages and costs, and find sureties for his good abearing for seven years, or continue in prison till he does: But this shall not extend to any grounds to be inclosed and used for conies after the making of this act, without the king's licence. 3 J. c. 13.

Killing in places inclosed or uninclosed, by night or day.

4. If any person shall at any time enter wrongfully into any warren or ground lawfully used or kept for the breeding or keeping of conies, whether it be inclosed or not; and there shall chase, take, or kill any conies; and shall be thereof convicted in one month after the offence, before one justice, by confession, or oath of one witness; he shall yield to the party grieved treble damages and costs, and be imprisoned 3 months, and after till he find sureties for his good abearing. 22 & 23 C. 2. c. 25. s. 4.

If by night, further penalty of transportation.

5. If any person shall wilfully and wrongfully, in the night time, enter into any warren or grounds lawfully used or kept for the breeding or keeping of conies, altho' the same be not inclosed, and shall then and there wilfully and wrongfully take or kill, in the night time, any coney, against the will of the owner or occupier thereof; or shall be aiding and assisting therein; and shall be convicted thereof at the assizes: he shall be transported for seven years, or suffer such other lesser punishment by whipping, fine, or imprisonment, as the court shall award. Provided, that conies may be taken, in the day time, on the sea or river banks in the county of [Lincoln, so far as the tide shall extend, or within one furlong of the said banks; and the person taking them shall not be obliged to make satisfaction for damage, unless

the

the same shall exceed the sum of 1s. 5 G. 3. c. 14.

f. 6, 7, 8, 9.

6. By the Black Act abovementioned, If any person, Felony without benefit of clergy. being armed and disguised, shall appear in any warren or place where conies are usually kept, or unlawfully rob any such warren; or (whether armed and disguised or not) shall rescue any person in custody for such offence, or procure any person to join him therein; he shall be guilty of felony without benefit of clergy.

7. No person shall kill or take in the night any conies Killing in the night, in the borders of warrens. upon the borders of warrens, or other grounds lawfully used for the breeding or keeping of conies (except the owner or possessor of the ground, or persons employed by them); on pain that the offender, on conviction in one month after the offence, before one justice, by confession, or oath of one witness, shall give to the party injured such damages and in such time as shall be appointed by the justice, and over and above pay down presently to the overseers for the use of the poor such sum not exceeding 10s. as the justice shall appoint; which if he shall not do, the justice shall commit him to the house of correction for such time as he shall think fit, not exceeding one month. 22 & 23 G. 2. c. 25. f. 5.

The statute saith, *upon the borders of warrens*; but if they are out of the warren, no person hath any property in them, and a man may justify killing them if they eat up his corn; but no action lies against the owner of the warren. 5 Co. 104. *Read. Game.*

So a person that hath a right of common may kill them, when they are out of the warren and destroy the common; but he cannot have an action on the case against the lord, for that would be to create a multiplicity of actions. *Cro. El. 548. Cro. Ja. 195. Cro. Car. 388.*

For a man cannot have an action for another man's conies breaking into his ground, because they are no longer the other's than while they are in the warren or place where he hath a right to keep them; so that no violation hereby arises to the property of one man by the beasts of another; but the conies, being in their natural liberty, may be lawfully killed by the owner of the soil. 2 Bac. Abr. 614.

But if the lord hath a right to put conies upon the common, and by an excess in the number surcharges the common,

common, and by the number of burrows made by the conies prevents the commoner's cattle from depasturing the common; an action in such case is the proper remedy, and the tenant may not of his own accord fill up the burrows and remove the nuisance. As in the case of *Cooper v. Marshall*, E. 30 G. 2. By lord Mansfield Ch. J. The question in this case is not, whether the act of the lord be or be not hurtful, or how far it may be so: but the question turns upon the remedy, whether it is abatable, whether the commoner can do himself justice. It may be prejudicial to the commoner, yet not injurious; it may be both prejudicial and injurious, yet not abatable. The lord, by his grant of common, gives every thing incident to the enjoyment of it, as ingress, egress, and the like: and thereby authorizes the commoner to remove every obstruction to his cattle's grazing the grass which grows upon such a spot of ground: because every such obstruction is directly contrary to the terms of the grant. A hedge, a gate, or a wall, to keep the commoner's cattle out, is inconsistent with a grant which gives them a right to come in. But the lord still remains owner of the soil; and is not debarred from exercising any act of ownership. The commoner has no right to meddle with the soil. In the present case, the lord has done nothing contrary to the grant. He hath not obstructed the commoner from entering and putting in his cattle. The lord has a right to put conies upon the common. The conies themselves naturally make the burrows. So that they are incident to the right of putting on the conies. If the lord surcharges, the commoner is injured in his right of common, it is true: But what is the commoners' remedy? Not, to abate; nor, to be his own judge, in a complicated question, which may admit of nicety to determine. There is a certain line to be drawn. The lord has a right so far, but no further. Yet the commoner cannot destroy or drive off the conies; nor, consequently can he destroy the burrows, which is in effect destroying the conies.——By Mr. Justice Denison: Upon the record of this case, it must be taken, that the plaintiff was owner of the soil, and had a free warren; and that there is not sufficient common left, by the increase of the conies, for the use of the commoner. The question then is, whether the commoner shall be intrusted to destroy the estate of the lord, in order to preserve his own right of common. This would be to constitute him-

self

self judge in his own cause: No, let him take his proper remedy. A coney-burrow is not of its own nature a nuisance: On the contrary, it is essential to a free warren. Therefore the nuisance depends upon the number of them: And you can, at the utmost, only abate so much of the thing as is a nuisance. You cannot destroy the whole (which is the right here claimed); but only so much of the thing as makes it a nuisance.——By Mr. justice *Foster*: This justification is clearly bad. It is founded on a claim of right which cannot be maintained. It is admitted, that a commoner cannot in this case destroy the conies. Consequently; he cannot destroy the burrows; for the effect is, destroying the conies. If the lord has exceeded the bounds of his right, the law is to determine the quantum of such excess; and to the law the commoner must resort for his remedy, if he is aggrieved. *Burrow. Mansfield. 252.*

8. If any person shall be found or apprehended setting or using any snares or other like engines, and shall be thereof in like manner convicted, he shall give to the party grieved such damages, and in such time as the justice shall appoint, and pay down presently to the overseer for the use of the poor such sum not exceeding 10s. as the justice shall appoint; which if he shall not do, the justice shall commit him to the house of correction not exceeding one month. 22 & 23 C. 2. c. 25. s. 6.

Setting snares.

9. If any person not having lands or hereditaments of 40l. a year, or not worth in goods 200l. shall use any gun or bow to kill conies, or shall keep any ferrets or coney goods (except he have grounds inclosed for keeping of conies, the increasing of which shall amount to 40s. a year to be let, and except warreners in their warrens); in such case, any person having 100l. a year may seize the same to his own use. 3 J. c. 13. s. 5.

Keeping engines.

VI. Laws concerning the winged game in particular.

I. Of hawks and hawking.

II. Of swans.

III. Of partridges and pheasants.

IV. Of pigeons.

V. Of wild ducks, wild geese, and other water fowl.

VI. Of beath fowl or moor game.

VII. Of herons.

VIII. Of other fowl.

I. Of hawks and hawking.

What hawks a
man shall bear.

1. No man shall bear any hawk of the breed of *England*, called a nyesse, goshawk, tassel, laner, laneret, or faulcon, on pain of forfeiting his hawk to the king. And if he bring any of them over sea, he shall bring a certificate thereof from the officer of the port; on the like pain of forfeiting the same to the king. And the person that bringeth any such hawk to the king, shall have a reasonable reward of the king, or else the hawk for his labour. 11 *H. 7. c. 17.*

Persons finding
a hawk.

2. Every person who findeth a faulcon, tercelet, laner, or laneret, or other hawk that is lost, shall presently bring the same to the sheriff; and the sheriff shall make proclamation in all the good towns in the county, that he hath such an hawk in his custody; and if he is challenged in four months, the owner shall have him again, paying the costs: if he is not challenged in four months, the sheriff shall have him, making gree to him that took him, if he be a simple man; but if he be a gentleman, and of estate to have the hawk, then the sheriff shall redeliver to him the hawk, taking of him reasonable costs for the time that he had him in his custody. 34 *Ed. 3. c. 22.*

Stealing a hawk.

3. And if any man steal any hawk, and the same carry away, not doing the ordinance aforesaid; it shall be done of him as of a thief, that stealeth a horse or other thing. 37 *Ed. 3. c. 19.* That is, he shall be guilty of felony, but shall have his clergy. 3 *Infl. 98.*

Taking hawks
or eggs out of
the woods.

4. If any person shall take away any hawks or their eggs, by any means unlawfully, out of the woods or

ground of any person; and be thereof convicted at the assizes or sessions, on indictment, bill, or information, at the suit of the king or of the party; he shall be imprisoned three months, and shall pay treble damages; and after the three months expired, shall find sureties for his good abearing for seven years, or remain in prison till he doth. 5 *El. c. 21. f. 3.*

But by a more ancient statute, no man shall take any ayre, faulcon, gofhawk, tassel, laner, or laneret, in their warren, wood, or other place; nor purposely drive them out of their coverts accustomed to breed in, to cause them to go to other coverts to breed; nor slay them for any hurt done by them: on pain of 10 l. half to him that will sue before the justices of the peace, and half to the king. 11 *H. 7. c. 17.*

And no manner of person, of what condition or degree he be, shall take or cause to be taken, on his own ground or any other man's, the eggs of any faulcon, gofhawk, or laner, out of the nest; on pain (being convicted thereof before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will; half to the king, and half to the owner of the ground where the eggs were taken. *id.*

5. If any manner of person shall hawk in another man's corn after it is eared, and before it is shocked; and ^{Hawking in corn.} be convicted at the assizes, sessions, or leet; he shall forfeit 40 s. to the owner: And if not paid in ten days, he shall be imprisoned for a month. 23 *El. c. 10.*

II. Of swans.

1. No person (other than the king's son) unless he ^{Qualification to} have lands of freehold to the value of five marks a year, ^{keep swans.} shall have any mark or game of swans; on pain of forfeiting the swans, half to the king, and half to any person (so qualified) who shall seize the same. 22 *Ed. 4. c. 6.*

2. It is felony to take any swans that be lawfully marked, tho' they be at large. *Dalt. c. 156.* ^{Stealing swans marked.}

3. And as to swans unmarked; if they be domestical ^{Swans un-} or tame, that is, kept in a moat, or in a pond near to a ^{marked.} dwelling house, to steal such is also felony. *Dalt. c. 156.*

So it seemeth of swans unmarked, so long as they keep within a man's manor, or within his private rivers; or if they happen to escape from thence, and be pursued and taken, and brought in again. *id.*

But

But if swans that are unmarked shall be abroad, and shall attain to their natural liberty, then the property of them is lost; and so long, felony cannot be committed by taking them. *id.*

And yet such unmarked and wild swans the king's officers may seize (being abroad) for the king's use, by his prerogative. Also, the king may grant them, and by consequence another may prescribe to have them, within a certain precinct or place. *id.*

Swans eggs.

4. Every person who shall take the eggs of any swans out of the nest, or wilfully spoil them in the nest; and shall be convicted thereof before two justices, by confession, or oath of two witnesses; shall be committed to gaol three months, unless he pay to the churchwardens for the use of the poor, 20 s. for every egg; or after one month of his commitment, become bound by recognizance with two sureties in 20 l. apiece, before two justices, never to offend again in like manner; which recognizance shall be returned to the next sessions. 1 J. c. 27. f. 2.

But by a more ancient statute, no person shall take or cause to be taken, on his own ground or any other man's, the eggs of any swan; on pain (on conviction before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will, half to the king's, and half to the owner of the swans. 11 H. 7. c. 17.

III. Of partridges and pheasants.

Partridges and pheasants are birds of warren, and the law seems peculiarly to protect them; as appears by what follows:

Taking them in another man's ground.

1. By the 11 H. 7. c. 17. it is enacted, that no person of what condition he be, shall take or cause to be taken, any pheasants or partridges by nets, snares, or other engines, out of his own warren, upon the freehold of any other person, without the special licence of the owner or possessor of the same; on pain of 10 l. half to him that shall sue, and half to the owner or possessor of the ground where they shall be taken.

Taking them with dogs, nets, or engines; or their eggs.

2. Every person who shall shoot at, kill, or destroy any pheasant or partridge, with any gun or bow; or shall take, kill, or destroy them with setting dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever; or shall take their eggs out of the nest, or spoil them in the nest; shall on conviction before two justices

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justices, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay upon conviction to the churchwardens for the use of the poor, 20 s. for every pheasant, partridge, or egg; or after one month after his commitment, become bound by recognizance with two sureties, before two justices, in 20 l. each, not to offend again in like manner. The recognizance to be returned to the next sessions. 1 *J. c. 27. f. 2.*

And by the 7 *J. c. 11.* Every person who shall take, kill, or destroy, any pheasant or partridge, with setting dogs and nets, or otherwise with any manner of nets, snares, or engines, shall, on conviction before two justices, by confession, or oath of one witness, be committed to gaol for three months, unless he forthwith pay to the churchwardens, or overseers 20 s. for every pheasant or partridge; and further to become bound by recognizance of 20 l. before one justice, that he shall not thereafter kill or destroy any pheasant or partridge. The recognizance to be filed at the next sessions.

3. Every person who shall sell, or buy to sell again, Selling or buying. any partridge or pheasant (except they be reared and brought up in houses, or brought from beyond sea); shall on conviction at the assizes or sessions, or before two justices out of sessions, forfeit for every partridge 10 s. and for every pheasant 20 s. half to him that will sue, and half to the poor. 1 *J. c. 27. f. 4.*

4. By the 23 *El. c. 10.* If any person, of what estate, Taking in the degree, or condition soever, shall take, kill or destroy any pheasants or partridges in the night time; and be thereof convicted at the assizes, sessions, or leet; he shall forfeit for every pheasant 20 s. and for every partridge 10 s. half to him that shall sue, and half to the lord of the manor, unless such lord shall license or procure the said taking or killing, in which case the said half shall go to the poor, to be recovered by any one of the churchwardens; and if not paid in 10 days after conviction, he shall be imprisoned for one month: And moreover, besides such forfeiture and imprisonment, he shall give bond to some justice of the peace, with good sureties, not to offend again in like manner for the space of two years.

By the 9 *An. c. 25.* If any person whatsoever shall take or kill any pheasant or partridge in the night time; he shall on conviction before one justice, on oath of one witness, forfeit 5 l. half to the informer, and half to the poor, by distress; for want of distress, to be sent to the house

house of correction for three months for the first offence, and for every other offence four months.

And by the 10 G. 3. c. 19. If any person shall wilfully, upon any pretence whatsoever, take, kill, or destroy, or use any gun, dog, snare, net, or other engine, for taking, killing, or destroying, any pheasant or partridge, in the night, between one hour after sun-setting and one hour before sun-rising; and shall be convicted thereof, on the oath of one witness, before one justice; he shall, for the first offence, be committed to the common gaol or house of correction, for any time not exceeding 6 calendar months, nor less than 3; for the second or other subsequent offence, for any time not exceeding 12 calendar months, nor less than 6: And shall also, within 3 days from the time of commitment, either for the first or any other offence, be once publicly whipped in the town where such gaol or house of correction shall be, between the hours of twelve and one of the clock in the day. With the like form of conviction, and power of appealing, as for killing any hare in the night, as is above expressed.

Killing on Sunday.

5. By the said act of 10 G. 3. c. 19. Any person, in like manner convicted of taking, killing, or destroying, or of using any gun, dog, snare, net, or other engine to take, kill, or destroy any pheasant or partridge on a Sunday; shall forfeit not exceeding 30*l.* nor less than 20*l.* as to the justice shall seem meet; and if not forthwith paid, the said justice shall levy the same by distress; to be distributed half to the informer, and half to the poor: and if no sufficient distress can be had, the said justice shall commit the offender to the common gaol or house of correction for any time not exceeding six calendar months, nor less than three. With like form of conviction and power of appealing as before.

At what time hawking at them shall be prohibited.

6. Every person whatsoever, who shall hawk at, destroy, or kill, any pheasant or partridge, with any kind of hawk, or dog, by colour of hawking, between the first of *July*, and the last of *August*, shall on conviction before two justices, by confession, or oath of two witnesses, in six months after the offence, be committed to gaol for one month, unless he pay upon conviction to the churchwardens or overseers for the use of the poor, 40*s.* for every such hawking at any pheasant or partridge, and 20*s.* for every such pheasant or partridge which he, his hawk, or dog, shall take or kill. 7*f.* c. 11. *f.* 2.

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7. Finally, by the 2 G. 3. c. 19. No person shall, upon any pretence whatsoever, take, kill, carry, sell, buy, or have in his possession or use, any partridge between Feb. 12. and Sep. 1. or any pheasant between Feb. 1. and Oct. 1. yearly; on pain of forfeiting, on conviction by one witness, in any of the courts of record at *Westminster*, 5 l. for every such fowl, with full costs. But this not to extend to any pheasant taken in the season allowed by this act, and kept in any mew or breeding place.

Within what times taking them in any kind shall be prohibited.

IV. Of pigeons.

1. A lord of a manor may build a dove-coat upon his own land, parcel of the manor; but a tenant of a manor cannot do it without the lord's licence. 3 *Salk.* 248. But any freeholder may build a dove-coat on his own ground. *Cro. El.* 548. *Cro. Ja.* 382.

Who may erect a dove-coat.

2. And it hath been adjudged, that erecting of a dove-house is not a common nuisance, nor presentable in the *lect.* *Cro. Jac.* 490, 1.

Dove-coat not a nuisance.

3. By the 17. c. 27. s. 2. Every person who shall shoot at, kill, or destroy any house-dove or pigeon with any gun or bow; or shall take, kill, or destroy the same with setting dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever; shall, on conviction before two justices where the offence shall be committed or the offender apprehended, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay to the churchwardens for the use of the poor of the parish where the offence was committed or the offender apprehended respectively, 20 s. for every pigeon, or after one month after his commitment, become bound by recognizance with two sureties, before two justices, in 20 l. apiece, not to offend again in like manner. The recognizance to be returned to the next sessions.

Killing with dogs, nets, or engines.

And by the 2 G. 3. c. 29. If any person shall shoot at with an intent to kill or by any means kill or take, with a wilful intent to destroy any house-dove or pigeon, and shall be thereof convicted, by confession or oath of one witness, before one justice where the offence was committed or the party apprehended, he shall forfeit 20 s. to the prosecutor; and if not forthwith paid, such justice may commit him to the gaol or house of correction, not exceeding 3 calendar months nor less than one, unless the forfeiture shall be sooner paid. But this not to extend to

the owners of dove-coats, with regard to their own pigeons. And persons convicted on this act, shall not be convicted on any former act: and prosecutions on this act shall be commenced and carried on with effect within two months after the offence committed: and persons imprisoned for default of payment of the penalty, shall not be liable afterwards to pay such penalty.

Pigeons trespassing.

4. But if the pigeons come upon my land, and I kill them; the owner hath no remedy against me; tho' I may be liable to the statutes which make it penal to destroy them. *Cro. Jac.* 492.

Pigeons to go to the heir.

5. Doves in a dove-house, young and old, shall go to the heir, and not to the executor. *1 Inst.* 8.

V. Of wild ducks, wild geese, and other water fowl.

Shooting water fowl.

1. Every person who shall shoot at, kill, or destroy with any gun or bow, any mallard, duck, teal, or widgeon; and the same be proved by confession, or oath of two witnesses, before two justices;—shall be committed to gaol for three months, unless he pay to the churchwardens for the use of the poor, 20 s. for each fowl, or after one month after commitment become bound by recognizance with two sureties, before two justices, in 20 l. each, not to offend again in like manner: Which recognizance shall be returned to the next sessions. *1 J. c.* 27. *f.* 2.

Not to be taken in the moulting season.

2. No person, between the last day of *May*, and the last day of *August* yearly, shall take, or cause to be taken, any wild ducks, mallards, widgeons, teals, or wild geese, with nets or other engines; on pain of a year's imprisonment, and to forfeit for every fowl so taken 4 d. half to the king, and half to him that will sue by action of debt: Also the justices of the peace may enquire of, hear and determine the same, as in cases of trespass. *25 H. 8. c.* 11.

Nevertheless, any gentleman, or any other that may dispend 40 s. a year of freehold, may hunt and take such wild fowl with their spaniels only, without using a net or other engine except the long bow. *id.*

But by a subsequent statute, if any person whatsoever (between *June* 1. and *Oct.* 1. yearly, *10 G. 2. c.* 32.) shall by hays, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other water fowl, in any place of resort for wild fowl in the moulting season; and shall be convicted thereof before one justice by the oath of

one

one witness; he shall for every such fowl forfeit 5 s. half to the informer, and half to the poor, by distress, rendering the overplus above the penalty and charges of distress; for want of distress, to be committed to the house of correction not exceeding one month, nor less than 14 days, to be whipt and kept to hard labour. And the nets to be seized and destroyed in the presence of the justice.

9 *An. c. 25. f. 4.*

3. No person from *March 31. to June 30. yearly*, shall take or destroy the eggs of any mallard, teal, or other water fowl; on pain of a year's imprisonment, and of forfeiting for every egg one penny, half to the king, and half to him that will sue by action of debt; or, the justices of the peace may determine the same as in cases of trespass. 25 *H. 8. c. 11.*

VI. Of heath fowl or moor game.

1. Every person who shall shoot at, kill, or destroy, with any gun or bow, any grouse, heath-cock, or moor game; shall on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless upon conviction he pay to the churchwardens for the use of the poor, 20 s. for each fowl, or, after one month after his commitment, become bound by recognizance with two sureties in 20 l. each, before two justices, not to offend again in like manner: the recognizance to be returned to the next sessions. 1 *J. c. 27. f. 2.*

2. No person shall, upon any pretence whatsoever, take, kill, carry, sell, buy, or have in his possession or use, any heath fowl commonly called black-game, between *Jan. 1. and Aug. 20.* or any grouse, commonly called red game, between *Dec. 1. and July 25. yearly*; on pain of forfeiting, on conviction by one witness in any of the courts of record at *Westminster*, 5 l. for every such fowl, to him who shall sue, with full costs. 2 *G. 3. c. 19.*

3. By the 9 *An. c. 25.* If any person whatsoever shall take or kill any moor, heath-game, or grouse, in the night time; he shall, on conviction before one justice, on the oath of one witness, forfeit 5 l. half to the informer, and half to the poor, by distress; for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence four months.

And by the 10 G. 3. c. 19. If any person shall wilfully, upon any pretence whatsoever, take, kill, or destroy, or use any gun, dog, snare, net, or other engine, for taking, killing or destroying any moor game, heath game, or grouse, in the night, between one hour after sun-setting and one hour before sun-rising; he shall, on conviction before one justice, on the oath of one witness, for the first offence be committed to the common gaol or house of correction for any time not exceeding six calendar months nor less than three; for every other offence, not exceeding twelve calendar months, nor less than six: And shall also, within three days from the time of his commitment, either for the first or any other offence, be once publicly whipped in the town where such gaol or house of correction shall be, between the hours of twelve and one of the clock in the day. With like form of conviction, and power of appealing, as for killing an hare in the night, as is above particularly set forth.

Killing on
Sundays.

4. By the said act of 10 G. 3. c. 19. If any person shall be in like manner convicted of taking, killing, or destroying, or of using any gun, dog, snare, net, or other engine to take, kill, or destroy, any moor game, heath game, or grouse, on a Sunday; he shall forfeit not exceeding 30 l. nor less than 20 l.; and if not forthwith paid, the justice shall cause the same to be levied by distress; to be distributed half to the informer, and half to the poor: and if no sufficient distress can be had, the said justice shall commit the offender to the common gaol or house of correction not exceeding six calendar months, nor less than three. With like form of conviction, and power of appealing, as before.

Burning ling.

5. For the better preserving the red and black game of grouse commonly called heath-cocks, or heath-polts, no person whatsoever on any mountains, hills, heaths, moors, forests, chases, or other wastes, shall presume to burn between Feb. 2. and June 24. any grig, ling, heath, furze, goss, or fern; on pain of being committed to the house of correction, for any time not exceeding one month, nor less than ten days, there to be whipt and kept to hard labour. 4 & 5 W. c. 23. s. 11.

As here is no method of conviction directed for this offence, the justices of the peace seem to have no cognizance thereof; but the trial and conviction must be at the assizes, or in the courts at *Westminster*.

In the 5 An. c. 14. there are particular directions concerning the burning of ling, heath, or brakes in *Sherwood* forest,

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forest, and other places in *Nottinghamshire*, which not being of general concern are here omitted.

VII. Of herons,

1. Every person who shall shoot at, kill or destroy, ^{Shooting herons,} any heron, with gun or bow, shall on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless on conviction he pay to the churchwardens for the use of the poor, 20 s. for each heron, or after one month from his commitment, become bound by recognizance with two sureties in 20 l. each, before two justices, not to offend again in like manner: The recognizance to be returned to the next sessions.

1 J. c. 27. s. 2.

2. No person, without his own ground, shall flea, take, or ^{None shall take but by hawking.} cause to be taken, by mean of craft or engine, any herons, unless it be with hawking; or with long bow; on pain of 6 s. 8 d. to him who shall sue by action of debt; or the sessions may call before them persons suspected, and examine them; and if found in default, may commit them till they have found surety for payment of the forfeiture to the king; and the justices shall have the tenth part of the forfeiture for their labour. 19 H. 7. c. 11.

3. And no person, without his own ground, shall take ^{Young herons,} any young herons out of the nest; on pain of 10 s. in like manner for every young heron. 19 H. 7. c. 11.

4. And if any person from *March* 31. to *June* 30. ^{Eggs.} shall take or destroy the eggs of any heron: he shall be imprisoned for a year, and forfeit for every egg 8 d. half to the king, and half to him that will sue by action of debt, or before the justices of the peace. 25 H. 8. c. 11.

VIII. Of other fowl.

In general; No manner of person, from the last day of *March* to the last day of *June* yearly, shall by day or night, take, or destroy any eggs of any kind of wild fowl, from or in any nest or place, where they shall chance to be laid by any kind of the same wild fowl; on pain of imprisonment for a year, and to forfeit for every egg of a bustard 20 d. of a bittour or shovellard 8 d. and of other wild fowl (except crows, ravens, boscards, and other fowl not used to be eaten) 1 d. half to the king, and half to him that will sue by action of debt: Also the justices

of the peace may determine the same, as in cases of trespass. 25 H. 8. c. 11. *

VII. Laws for preserving the game of fish in particular.

There are some acts relating to this subject, of which, being of less general concern, it is thought sufficient to insert only the titles; viz.

(1) An act for the preservation of fishing in the river of Severn. 30 C. 2. c. 9.

* With regard to fowl not used to be eaten, together with certain other noxious animals, there were provisions made by an ancient statute, viz. 8 El. c. 15. intitled, *An act for the preservation of graine*. which it were to be wished might be revived, with a proper consideration of the difference of the value of money betwixt that time and the present; by which it was required, that the churchwardens should levy by an assessment, and pay, for the heads of every three old crows, choughes, or rookes, 1d; of sixe young crows, choughes, or rookes, 1d; and for every sixe egges of any of them, 1d; for every twelve stares heads, 1d; for every heade of merten hawks, farsekytte, moldkytte, busarde, schagge, carmeraunt, or ryingtaylor, 2d; and for two egges of them 1d; for every iron or ospraye's heade, 4d; for the heade of every wood wall, pye, jay, raven, kyte, or king's fisher, 1d; bulfynce, or other bird that devoureth the blowth of fruit, 1d; for the heade of every foxe or gray, 12d; and for the heade of every fytchewe, polcate, wesel, stote, sayre, bade, or wylde cat, 1d; for the heads of every otter or hedgehogge, 2d; for the heads of three rattes or twelve mise, 1d; for the heade of every want or moldwarpe, 1 halfpenny.

And by another ancient statute 24 H. 8. c. 10. Every township was required to keep a crow net, to destroy crows, rooks, and choughs.

There is some shadow of these regulations still remaining in some parishes, where they give rewards for destroying several of the abovesaid noxious fowl and vermin. These statutes were suffered to expire, probably because in a short time there would be no need of their continuance; but it might be convenient nevertheless, to revive the like provisions from time to time; and, amongst the rest of the ravenous tribe, to set a price now at length upon the head of that distinguished fowl, for the sake of which most of the ancient laws concerning the winged game were enacted, and which it was felony to destroy. But now the current hath received a contrary direction; and the hawk himself destroys more game, than gunpowder and hailshot which have usurped his empire.

(2) An

(2) An act for the increase and better preservation of salmon and other fish, in the rivers within the counties of *Southampton* and *Wilt.* 4 *An. c.* 21. In which some alterations are made by the 1 *G. st.* 2. *c.* 18.

(3) An act for the better preservation and improvement of the fishery within the river of *Thames*, and for regulating and governing the company of fishermen of the said river. 9 *An. c.* 26.

(4) An act for the more effectual preservation and improvement of the spawn and fry of fish in the river of *Thames*, and waters of *Medway*; and for the better regulating the fishery thereof. 30 *G. 2. c.* 21.

What follows seems best reducible under these heads :

I. The penalty of fishing in ponds and other private fisheries.

II. Rules about the size, and preserving the breed of fish.

III. Rules concerning fishing in or near the sea.

IV. Importing fish.

I. The penalty of fishing in ponds and other private fisheries.

1. Any man may erect a fish pond without licence; who may erect because it is a matter of profit, and for the increase of a fish pond. victuals. 2 *Inst.* 199.

2. If any trespassers in ponds be thereof attainted at the suit of the party, great and large amends shall be awarded according to the trespass; and they shall have three years imprisonment, and after shall make fine at the king's pleasure (if they have whereof) and then shall find good surety that after they shall not commit the like trespass: And if they have not whereof to make fine, after three years imprisonment, they shall find like surety; and if they cannot find like surety they shall abjure the realm. And if none sue within the year and day, the king shall have the suit. 3 *Ed. 1. c.* 20.

Note; Those are trespassers in ponds, who endeavour to take fish therein. 2 *Inst.* 200.

3. If any person shall unlawfully break, cut, or destroy any head or dam of a fish pond, or shall wrongfully fish therein, with intent to take or kill fish; he shall on conviction at the suit of the king, or of the party, at the assizes, be imprisoned three months, and be liable to a fine of 100 s. 4

sizes or sessions, be imprisoned three months, and pay treble damages; and after the three months expired shall find sureties for his good abearing for seven years, or remain in prison till he doth. 5 *El. c. 21. f. 2, 6.*

Treble damages,
and 10s. to the
poor.

4. Whereas divers idle, disorderly, and mean persons, betake themselves to the stealing, taking, and killing of fish, out of ponds, pools, motes, stews, and other several waters and rivers, to the great damage of the owners thereof; it is enacted, that if any person shall use any net, angle, hair, noose, troll, or spear; or shall lay any wears, pots, fish hooks, or other engines; or shall take any fish by any means or device whatsoever, or be aiding thereunto, in any river, stew, pond, mote, or other water, *without the consent of the lord or owner of the water*; and be thereof convicted by confession, or oath of one witness, before one justice, in one month after the offence; every such offender in stealing, taking or killing fish, shall for every such offence give to the party injured such recompence and in such time as the justice shall appoint, not exceeding treble damages; and moreover shall pay down to the overseers for the use of the poor, such sum, not exceeding 10s. as the justice shall think meet: In default of payment, to be levied by distress; for want of distress, to be committed to the house of correction not exceeding one month, unless he enter into bond with one surety to the party injured, not exceeding 10 l. never to offend in like manner. 22 & 23 *C. 2. c. 25. f. 7.*

And the justice may take, cut, and destroy all such angles, spears, hairs, nooses, trolls, wears, pots, fish hooks, nets or other engines, wherewith such offender shall be apprehended. *f. 8.*

Persons aggrieved may appeal to the next sessions, whose determination shall be final, if no title to any land, royalty, or fishery be therein concerned. *f. 9.*

M. 32 G. 2. K. and Mallinson. A conviction for *taking and killing fish*, not setting forth (amongst other particulars) that the defendant had not the licence or *consent of the owner*, was adjudged to be bad. For, by the court; The offence provided against by the act is *stealing* fish, taking it without the consent of the owner. The jurisdiction given to the justice is over every such offender in stealing, taking, and killing. But the man here is not convicted of any offence; for he is not charged with stealing, nor even with taking and killing the fish of another person, or in another person's pond. It may be his own pond, and his own fish, for any thing that is stated

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5. Whereas divers idle, disorderly, and mean persons, ^{Engines to be seized.} have and keep nets, angles, leaps, piches and other engines for the taking and killing of fish out of the ponds, waters, rivers, and other fisheries, to the damage of the owners thereof, therefore no person hereafter shall have or keep any net, angle, leap, piche, or other engine for the taking of fish, other than the makers and sellers thereof, and other than the owner and occupier of a river or fishery; and except fishermen and their apprentices lawfully authorized in navigable rivers. And the owner or occupier of the river or fishery, and every other person by him appointed, may seize, detain, and keep to his own use, every net, angle, leap, piche, and other engine, which he shall find used or laid, or in the possession of any person fishing in any river or fishery, without the consent of the owner or occupier thereof. And also any person, authorized by a justice's warrant, may in the day time search the houses, outhouses, and other places of any person hereby prohibited to have or keep the same, who shall be suspected to have or keep in his custody or possession any net, angle, leap, piche, or other engine aforesaid, and seize and keep the same to his own use, or cut or destroy the same, as things by this act prohibited to be kept by persons of their degree. 4 & 5 W. c. 23. s. 5, 6.

6. If any person shall enter into any park or paddock ^{Transportation, or pecuniary forfeiture.} fenced in, and inclosed, or into any garden, orchard, or yard, adjoining or belonging to any dwelling house, in or through which park or paddock, garden, orchard, or yard, any river or stream of water shall run or be, or wherein shall be any river, stream, pond, pool, moat, stew, or other water, and by any ways, means, or device whatsoever, shall steal, take, kill, or destroy, any fish bred, kept, or preserved therein, without the consent of the owner thereof; or shall be aiding or assisting therein; or shall receive or buy any such fish, knowing the same to be so stolen or taken as aforesaid; and shall be convicted thereof at the assizes, within six calendar months after the offence committed; he shall be transported for seven years. And any offender, surrendering himself to a justice, or being apprehended or in custody for such offence or on any other account, who shall make confession thereof, and a true discovery on oath of his accomplice or accomplices, so as such accomplice may be apprehended,

apprehended, and shall on trial give evidence so as to convict such accomplice, shall be discharged of the offence so by him confessed. 5 G. 3. c. 14. f. 1, 2.

And if any person shall take, kill, or destroy, or attempt to take, kill, or destroy, any fish in any river or stream, pond, pool, or other water (not being in any park or paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling house, but in any other inclosed ground being private property); he shall, on conviction before one justice, on the oath of one witness, forfeit 5 l. to the owner or owners of the fishery of such river or stream of water, or of such pond, pool, moat, or other water: And such justice, on complaint upon oath, may issue his warrant to bring the person complained of before him; and if he shall be convicted before such justice, or any other justice of the county or place, he shall immediately after conviction pay the said penalty of 5 l. to such justice, for the use of such person as the same is hereby appointed to be paid unto; and in default thereof, shall be committed by such justice to the house of correction for any time not exceeding six months, unless the forfeiture shall be sooner paid: Or such owner of the fishery may bring an action for the penalty (within six calendar months after the offence) in any of the courts of record at Westminster. f. 3, 4.

Provided, that nothing in this act shall extend to subject any persons to the penalties thereof, who shall fish, take, or kill, and carry away, any fish in any river or stream of water, pond, pool, or other water, wherein such person shall have a just right or claim to take, kill, or carry away such fish. f. 5.

[There seem to be some difficulties upon the face of this act; but the general purport thereof seemeth to be, for the protection of *private fisheries*, and not as intending to prohibit persons otherwise qualified, from taking any fish at all in any place whatsoever, unless such person hath an exclusive grant from the crown of a fishery within certain bounds.

As to the *transportation* clause; the prosecution must be at the assizes within *six calendar months* after the offence committed. It would have answered the purpose more effectually, if the prosecution had been directed to be at the *next* assizes; for the assizes are not held precisely at six months distance, so that an offender in the intermediate space may escape: and in some counties the assizes are held but once a year.

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But the greatest difficulty is upon the other clause, concerning the killing of fish, not in any paddock, garden, orchard, or the like, but within any other inclosed ground being private property. By this it seemeth generally to be understood, that no person (not having a private fishery) may kill fish, except in a river running thro' or by a common. But the application of the penalty seemeth to restrain the generality of the clause to private fisheries only. For the penalty is given to the *owner of the fishery*. A lord of a manor, as such, doth not seem to have an exclusive right to all the fish within his manor, any more than to any other game. These animals, being *feræ naturæ*, are originally the king's; and are granted by him, with the advice and assent of the lords spiritual and temporal and commons in parliament assembled, to persons qualified by estate or degree, as the acts of parliament for that purpose set forth. In such case, no lord of a manor or other hath an exclusive privilege; but if another person comes upon his ground, who hath no right upon such ground, but hath a right by qualification to kill game, such person is liable to an action, not for killing game, but only for the trespass. But a man by grant, or by prescription (as it seemeth, which is evidence of a grant), may claim to have an exclusive fishery within certain limits; and this statute seemeth intended to protect such fishery. And the proviso or exception seemeth to be inserted on the behoof of persons qualified; for it could not be supposed that the act intended to prohibit the owners themselves of fisheries from the taking of fish within their own liberties. But as there is a variety of opinions upon the aforesaid clause, an explanation thereof might be of use.]

7. By the Black act before mentioned, if any person being armed and disguised, shall unlawfully steal or take away any fish out of any river or pond; or (whether armed and disguised or not) shall unlawfully and maliciously break down the head or mound of any fish pond, whereby the fish shall be lost or destroyed, or shall rescue any person in custody for such offence, or procure any other to join with him therein; he shall be guilty of felony without benefit of clergy.

II. Rules concerning the assize, and preserving the breed of fish.

Salmon.

1. If any person shall lay or draw any net, engine, or other device, or cause any thing to be done in the *Severn, Dee, Wye, Teame, Were, Tees, Ribble, Mersey, Dun, Air, Ouze, Swaile, Calder, Wharf, Eure, Darwent, or Trent*, whereby the spawn or fry of salmon, or any keeper or shedder salmon, or any salmon not 18 inches from the eye to the extent of the middle of the tail, shall be taken and killed; or shall set any bank, dam, hedge, flank, or net cros the same, whereby the salmon may be taken, or hindred from passing up to spawn; or shall between *July 31. and Nov. 12.* (except in the *Ribble*, where they may be taken between *Jan. 1. and Sep. 15.*) take any salmon of any kind in any of the said rivers; or shall, after *Nov. 12.* yearly, fish there for salmon with any net less than $2\frac{1}{2}$ inches in the mesh; he shall, on conviction, in one month, before one justice, on view, confession, or oath of one witness, forfeit 5 l. and the fish, nets, and engines; half the said sum to the informer, and half to the poor, by distress; for want of distress, to be committed to the house of correction or gaol, not more than three months, nor less than one, to be kept to hard labour, and suffer such other corporal punishment as the justice shall think fit: The nets and engines to be cut or destroyed, in presence of the justice: The banks, dams, hedges, and flanks, to be demolished at the charge of the offender, to be levied in like manner. 1 G. 2. c. 18. s. 14.

Note; It is not said who shall have the fish; so that it seemeth that they are forfeited to the king.

And no salmon out of the said rivers shall be sent to *London*, under six pounds weight; on pain that the sender, buyer, or seller, on the like conviction, shall forfeit 5 l. and the fish, half to the informer, and half to the poor, by distress; for want of sufficient distress, to be committed to the house of correction or gaol, to be kept to hard labour for three months; if not paid in the mean time. *id.* s. 15.

And persons aggrieved may appeal to the next sessions. *id.* s. 17.

Salmon spawn,
and smelts.

2. No salmon shall be taken in the *Humber, Ouze, Trent, Done, Aire, Darwent, Wharfe, Nid, Yore, Swale, Tese, Tine, Eden*, or any other water wherein salmon are taken, between

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between *Sep.* 8. and *Nov.* 11. Nor shall any young salmon be taken at mill-pools (nor in other places, 13 R. 2. *st.* 1. c. 19.) from *Midapril* to *Midsummer*; on pain of having the nets and engines burnt for the first offence, for the second, imprisonment for a quarter of a year; for the third, a whole year; and as the trespass increaseth, so shall the punishment. And overseers shall be assigned to inquire hereof. 13 *Ed.* 1. *st.* 1. c. 47. That is, under the great seal, and by authority of parliament. 2 *Inst.* 477.

And no person shall put in the waters of *Thames*, *Humber*, *Ouze*, *Trent*, nor any other waters, in any time of the year, any nets called stalkers, nor other nets or engines whatsoever, by which the fry or breed of salmon, lampreys, or any other fish may in any wise be taken or destroyed; on the like pain. 13 R. 2. *st.* 1. c. 19.

And the waters of *Lon*, *Wyre*, *Mersee*, *Rybyl*, and all other waters in *Lancashire*, shall be put in defence as to taking of salmon, from *Michaelmas* to *Candlemas*, and in no other time of the year. And conservators shall be appointed in like manner. 13 R. 2. *st.* 1. c. 19.

And the justices of the peace (and the mayor of *London* on the *Thames* and *Medway*) shall survey the offences in both the acts abovementioned; and shall survey and search all the weirs in such rivers, that they shall not be very strait for the destruction of such fry and brood, but of reasonable wideness after the old assize used or accustomed; and they shall appoint under-conservators, who shall be sworn to make like survey, search and punishment. And they shall inquire in sessions, as well by their office, as at the information of the under-conservators, of all defaults aforesaid, and shall cause them which shall be thereof indicted, to come before them; and if they be thereof convicted, they shall have imprisonment, and make fine at the discretion of the justices: and if the same be at the information of an under conservator, he shall have half the fine. 17 R. 2. c. 9.

3. By the 1. *El.* c. 17. No person, of what estate, degree, and condition soever he be, shall take and kill any young brood, spawn, or fry of fish; nor shall take and kill any salmon or trouts, not being in season, being keeper or shedder; nor any pike or pickerel not being in length 10 inches fish or more; nor any salmon not being in length 16 inches fish; nor any trout not being in length eight inches fish; nor any barbel not being in length

Spawn in general
and fish under
size and out of
season.

length 12 inches: and no person shall fish or take fish by any device, but only with net or trammel, whereof the mesh shall be two inches and a half broad (angling excepted, and except smelts, loches, minnies, bulheads, gudgeons, and eels): on pain of forfeiting 20 s. for every offence, and also the fish, nets, and engines.

(Note, in some editions of the statutes it is 20 l. in others 20 s. in the record it is not distinguishable whether it is pounds or shillings. The latter seems more adequate to the offence.)

And the conservators of rivers may inquire hereof by a jury; and in such case they shall have the fines.

The leet also may inquire hereof; and then the forfeiture shall go to the lord of the leet. And if the steward do not charge the jury therewith, he shall forfeit 40 s. half to the king and half to him that shall sue. And if the jury conceal the offence, he may impanel another jury to inquire of such concealment; and if it is found, the former jury shall forfeit every one 20 s. to the lord of the leet.

And if the offence is not presented in the leet within a year, then it may be heard and determined at the sessions or assizes. (Saving the right of the conservators.)

And by the 33 G. 2. c. 27. No person shall take, or knowingly have in his possession either in the water or on shore, or sell or expose to sale, any spawn, fry, or brood of fish, or any unsizeable fish, or fish out of season, or any smelt not five inches long: and any person may seize the same together with the baskets and package, and charge a constable or other peace officer with the offender and with the goods, who shall carry them before a justice; and on conviction before such justice, the same shall be forfeited and delivered to the prosecutor; and the offender shall besides forfeit 20 s. to be levied by distress by warrant of such justice, and distributed half to the prosecutor and half to the poor of the parish where the offence was committed (and any inhabitant of such parish, nevertheless, may be a witness); for want of sufficient distress, to be committed to the house of correction to be kept to hard labour for any time not exceeding three months, unless the forfeiture be sooner paid.—Provided, that the justice may mitigate the said penalty, so as not to remit above one half. Persons aggrieved may appeal to the next sessions.—And the form of the conviction may be this:

Be it remembred, that on this ——— day of ——— in the ——— year of the reign of ——— A. O. is convicted before me ——— one of his majesty's justices of the peace for the ——— of ——— for ——— and I do adjudge him to pay and forfeit the sum of ———. Given under my hand and seal the day and year abovesaid. *f.* 13, 15, 16, 17, 18, 19.

4. No person shall fasten any nets over rivers, to stand continually day and night; on pain of an hundred shillings to the king. *2 H. 6. c. 15.* Nets standing day and night.

III. Rules concerning fishing in or near the sea.

1. No person shall take, kill, or destroy any lobsters Lobsters. on the coast of Scotland, from June 1. to Sep. 1. on pain of 5 l. to be recovered by any person who shall inform and sue for the same, on a summary complaint before two justices of the shire on the coast where the offence shall be committed. *9 G. 2. c. 33. f. 4.*

2. Every person who shall set up any new wear along the sea shore, or in any haven, harbour, or creek; or within five miles of the mouth of any haven or creek, shall on conviction before one justice, or mayor, forfeit for every offence 10 l. half to the king, and half to him that shall sue; to be levied by the constables or churchwardens by distress. *3 J. c. 12. f. 2.* Erecting a new wear.

3. Every person who shall willingly take, destroy, or spoil any spawn, fry, or brood of any sea fish, in any wear or other engine or device whatsoever; shall forfeit for every offence 10 l. in like manner. *3 J. c. 12. f. 2.* Spawn of sea fish.

4. And every person who shall fish in any haven, harbour, or creek, or within five miles of the mouth of any haven, harbour, or creek of the sea, with any draw-net, or drag-net under three inches mesh, viz. $1\frac{1}{2}$ inch from knot to knot (except for the taking of smoulds in Norfolk only), or with any nets with canvas, or other engine or device, whereby the spawn, fry, or brood of sea fish may be destroyed; shall in like manner forfeit such net, and also 10 s. for every offence, half to the poor, and half to him that shall sue. *3 J. c. 12. f. 2.* Size of nets as sea.

But this act shall not extend to any net of lesser mesh, only for taking of herrings, pilchards, sprats, or lavidnian, *id. f. 3.*

And

And by a subsequent statute, if any person shall use at sea, on the *English* coast, any trawl-net, drag-net, or set-net, for catching of any fish (except herrings, pilchards, sprats or lavidnian) which hath the mesh less than $3\frac{1}{2}$ inches from knot to knot; or which hath a false or double bottom; or shall put one net behind another; he shall, on conviction (after summons) before one justice where the offender resides or shall be found, on oath of two witnesses, in one month after the offence, forfeit the same, and also 20 l. half to the informer, and half to the poor, by distress; for want of sufficient distress, to be committed to gaol for twelve months; and the nets to be burnt. 1 G. 2 c. 18. Persons aggrieved may appeal to the next sessions. *id.*

Size of sea fish.

5. By the same act of 1 G. 2. if any person shall bring to shore, or expose to sale any fish less than the following sizes from the eyes to the extent of the tail, *viz.* bret or turbot 16 inches, brill or pearl 14, codlin 12, whiting 6, bass and mullet 12, sole 8, plaice or dab 8, flounder 7; he shall forfeit the fish to the poor; and also 20 s. half to the informer, and half to the poor; to be levied in the like manner: for default of payment, or of sufficient distress, to be sent to the next house of correction, or other common gaol of the county, to be severely whipt and kept to hard labour six days, and not longer than 14. Persons aggrieved may appeal to the next sessions.

But by the 33 G. 2. c. 27. Bret or turbot, brill or pearl, altho' under the said dimensions, may be exposed to sale, so as the same be not sold by retail for above 6 d. a pound. And if any greater price shall be demanded or taken, or such fish shall not be weighed and measured if required; the same shall be forfeited, and the offender shall also forfeit 20 s. to be recovered, mitigated, and applied, as the penalties in the said act mentioned under the last head, relating to the spawn of fish, and fish under size, and out of season: and the money paid shall be returned to the party who paid the same. s. 11.

IV. Importing fish.

May be seized.

1. If any ling, herring, cod or pilchard, salmon, eels, or congers, taken by foreigners, shall be imported or exposed to sale; any person may seize the same, half for himself, and half for the poor. 18 C. 2. c. 2.

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2. And by the 1 G. 2. c. 18. and 9 G. 2. c. 33. ^{Penalty 100 l.} no fish taken by, or received of any foreigner, except protestants inhabiting in *England*, shall be imported (except eels, stock fish, anchovies, sturgeon, botargo, or caviar, lobster and turbot); on pain of 100 l. and the master of the vessel 50 l. half to the poor and half to the informer who shall sue in 12 months in any of the courts at *Westminster*.

For fishing, so far as the salt duties are concerned therein, may be consulted that part of the title *Excise*, which treateth of the duties upon salt.

The fish markets in *London* and *Westminster* are regulated by the statutes of 22 G. 2. c. 49. 29 G. 2. c. 39. 33 G. 2. c. 27. and 2 G. 3. c. 15. which are too large and not general enough to be here inserted.

A. Appointment of a gamekeeper; on the 22 & 23 C. 2. c. 25. s. 2. 5 An. c. 14. s. 4. and 3 G. c. 11. s. 1.

I A. L. esquire, lord of the manor of — do hereby nominate, authorise, and appoint A. G. of P. in the county of — yeoman, to be my gamekeeper of and within my said manor of — in the county aforesaid, with full power, licence, and authority to kill any hare, pheasant, partridge, or any other game whatsoever, in and upon my said manor of — for my sole use, and immediate benefit; and also to take and seize all such guns, bows, greyhounds, setting dogs, hurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbels, hays, or other nets, harepipes, snares, or other engines for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of my said manor of — shall be used by any person or persons who by law are prohibited to keep or use the same. Given under my hand and seal, this — day of — in the — year, &c.

B. Warrant to search for dogs and engines ; on the
22 & 23 C. 2. c. 25. s. 2.

Westmorland. { To —————

WHEREAS complaint hath been made unto me J. P. Esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. I. of ——— in the said county, yeoman, that he the said A. I. hath good ground to suspect and doth suspect that A. O. of ——— afore said in the county aforesaid, yeoman, being a person in no respect qualified by the laws of this realm so to do, hath and keepeth in his custody a greyhound [gun, net, &c.] to kill and destroy the game: These are therefore to command you in his majesty's name to enter into, and search in the day time, the houses, outhouses, and other places of him the said A. O. at ——— afore said, and if you there find any greyhound, &c. that you seize and keep the same for the use of A. L. Esquire, lord of the manor of ——— in which manor the said houses, outhouses, and other places, are situate and do lie, or otherwise that you cut in pieces or destroy the same. Given under my hand and seal the ——— day of ——— in the ——— year, &c.

C. Information against a person for keeping dogs or engines ; on the 5 An. c. 14. s. 4.

Westmorland. **T**HE information and complaint of A. I. of ——— in the county of ——— yeoman, made before me J. P. Esquire, one of his majesty's justices of the peace for the said county, the ——— day of ——— in the year ——— Who saith, That on the ——— day of ——— in the year ——— at the parish of ——— in the county aforesaid, one A. O. of ——— in the county aforesaid, shoemaker, did keep and use a certain dog called a greyhound [or as the case is] to kill and destroy the game, he the said A. O. not being qualified by the laws of this realm so to do ; whereby he the said A. O. hath forfeited the sum of five pounds. And thereupon he the said A. I. prayeth the judgment of me the justice aforesaid in the premisses, and that he may have one moiety of the said forfeiture, according to the form of the statute in that case made, and that the said A. O. may be summoned to answer the premisses before me the justice aforesaid.

Before me
J. P.

A. I.

D.

D. Summons thereupon.

Westmorland. { To the constable of——in the said county.

WHEREAS information and complaint hath been made before me J. P. esquire, one of his majesty's justices of the peace for the said county, that A. O. of——in the county aforesaid, shoemaker, on the——day of——in the year——at the parish of——in the county aforesaid, did keep and use a certain dog called a greyhound [or as the case is] to kill and destroy the game, he the said A. O. not being qualified by the laws of this realm so to do. These are therefore to require you forthwith to summon the said A. O. to appear before me at——in the said county, the——day of——at the hour of——to answer to the said information and complaint, and to be further dealt with according to law. And be you then there, to certify what you shall have done in the execution hereof. Herein fail you not. Given under my hand and seal the——day of——in the year——.

E. Conviction of keeping dogs or engines ; on the
5 An. c. 14. s. 4.

Westmorland. **B**E be remembred, that on the——day of——in the——year of the reign of——of Great Britain, France, and Ireland, king, defender of the faith, and so forth, at——in the county aforesaid, A. I. of——cometh before me J. P. esquire, one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, and giveth me the said justice to understand and be informed, that on the——day of——in the——year aforesaid, at the parish of——in the county aforesaid, one A. O. of the parish aforesaid in the county aforesaid, shoemaker, not then having lands and tenements, nor any other estate of inheritance, in his own or his wife's right, of the clear yearly value of 100 l. per annum, nor for term of life, nor any lease nor leases of 99 years, nor for any longer term, of the clear yearly value of 150 l. nor then being son and heir apparent of an esquire, nor of any other person of higher degree, nor the owner nor keeper of any forest, park, chase, or warren, nor gamekeeper to any lord or lady of a manor, did keep and use a certain dog, called a greyhound, to
kill

kill and destroy the game, against the form of the statute in that case made and provided: And afterwards upon the aforesaid day and in the year first abovementioned, he the said A. O. after having been duly summoned in this behalf before me the justice aforesaid, appeareth and is present, in order to make his defence against the said charge, and having heard the same, he the said A. O. is asked by me the said justice, if he can say any thing for himself, why he the said A. O. should not be convicted of the premisses above charged upon him in form aforesaid; who pleadeth that he is not guilty of the said offence: Nevertheless on the——day aforesaid in the year aforesaid, at ——aforesaid, in the county aforesaid, one credible witness, to wit, A. W. of——yeoman, cometh before me the aforesaid justice, and before me the same justice upon his oath on the holy gospel to him then and there by me the aforesaid justice administered, deposeth, sweareth, and upon his oath aforesaid affirmeth, and saith, that the aforesaid A. O. on the——day of——aforesaid, in the year aforesaid at the parish of——aforesaid, in the county aforesaid, not then having lands and tenements, nor any other estate of inheritance, in his own or his wife's right, of the clear yearly value of 100 l. per annum, nor for term of life, nor any lease nor leases of 99 years, nor for any longer term, of the clear yearly value of 150 l. nor then being son and heir apparent of an esquire, nor of any other person of higher degree, nor the owner nor keeper of any forest, park, chase, or warren, nor gamekeeper to any lord or lady of a manor, did keep and use a certain dog called a greyhound, to kill and destroy the game: And thereupon the aforesaid A. O. the——day of——in the year aforesaid, at——aforesaid, in the county aforesaid, before me the same justice, by the oath of one credible witness aforesaid, according to the form of the statute aforesaid, is convicted: And for his offence aforesaid hath forfeited the sum of five pounds, to be distributed as the statute aforesaid doth direct. In witness whereof, I the said justice to this present record of the conviction aforesaid, have set my hand and seal at ——aforesaid, in the county aforesaid, the——day of——aforesaid in the year aforesaid.

If he doth not appear upon the summons, the form may be varied accordingly; as is set forth specially under the title Conviction.

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F. Warrant to distrain 5*l.* for keeping dogs or engines; on the 5 *An. c. 14. s. 4.*

Westmorland. { To——

WHEREAS A. O. of——in the said county, shoemaker, is this day convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. being a person not qualified by the laws of this realm so to do, on the——day of——in the——year of the reign of——did keep and use in the parish of——afore said, in the county afore said, a certain dog called a greyhound, to kill and destroy the game, by virtue whereof he the said A. O. hath forfeited the sum of 5*l.* to be distributed as herein after is mentioned: These are therefore in his said majesty's name, to command you to levy the said sum by distress of the goods of him the said A. O. and if within the space of [four] days next after such distress by you taken, the said sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained, and out of the money arising by such sale that you do pay one half of the said sum of 5*l.* to A. I. of——in the said county, yeoman, who informed me of the said offence, and the other half of the said sum of 5*l.* to the overseers of the poor of the parish of——afore said, where the said offence was committed, for the use of the poor of the said parish; returning the overplus on demand unto him the said A. O. the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And if sufficient distress cannot be found of the goods of the said A. O. whereon to levy the said sum of 5*l.* that then you certify the same to me, together with the return of this precept. Given under my hand and seal the——day of——in the——year of——.

G. Commitment for want of distress, for keeping dogs and engines; on the 5 An. c. 14. s. 4.

Westmorland, { To the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county.

WHEREAS A. O. of ——— in the said county, shoemaker, was on the ——— day of ——— in the ——— year of ——— convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. not being a person by the laws of this realm qualified so to do, on the ——— day of ——— in the year aforesaid, did keep and use in the parish of ——— aforesaid, in the county aforesaid, a certain dog called a greyhound, to kill and destroy the game, by virtue whereof he the said A. O. hath forfeited the sum of 5 l; And whereas on the said ——— day of ——— in the year aforesaid, I did issue my warrant to the constable of ——— to levy the said sum of 5 l. by distress and sale of the goods of him the said A. O. and to distribute the same according as is directed by the statute in that behalf made; and whereas it duly appears to me, as well on the oath of the said constable, as otherwise, that he the said constable hath used his best endeavours to levy the said sum on the goods of the said A. O. as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you the said constable of ——— aforesaid, to apprehend the body of the said A. O. and him safely to convey to the house of correction at ——— in the said county, and there deliver him to the said keeper thereof, together with this precept. And I do hereby command you, the said keeper of the said house of correction, to receive into your custody in the said house of correction the said A. O. and him there safely to keep for the space of three months: and for so doing this shall be your sufficient warrant. Given under my hand and seal the ——— day of ——— in the ——— year, &c.

H. Certiorari bond, on a conviction for keeping dogs or engines; on the 5 *An. c. 14. f. 2.*

K NOW all men by these presents, &c. Whereas the above bound A. O. was lately convicted before J. P. esquire, one of his majesty's justices of the peace in and for the county of ———— aforesaid, of keeping and using at ———— aforesaid in the said county, a greyhound to kill and destroy the game; And whereas the said A. O. hath since his said conviction sued out his majesty's writ of certiorari to remove the same, and the proceedings thereupon, before the king himself wherever he shall be in England on ———— [the day of the return of the certiorari]: The condition of the above obligation is such, that if the abovebound A. O. do and shall (according to the true intent and meaning of the statute in that case made) well and truly pay to the said A. I. within 14 days after the said conviction shall be confirmed, or a procedendo granted thereupon, his full costs and charges which he shall sustain touching or concerning the said conviction and removal thereof by the said writ of certiorari; then the abovescribed obligation shall be void, otherwise of force.

I. Warrant against a higler having game in his possession; on the 5 *An. c. 14. f. 2,*

Westmorland. } To the constable of ————

W HEREAS A. I. of ———— hath this day made information and complaint upon oath before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, that on the ———— day of ———— now last past, A. O. of ———— in the parish of ———— in the county aforesaid, innkeeper, at ———— aforesaid, in the parish and county aforesaid, in the house of him the said A. O. then and there had in his possession one hare [or, did offer to sell one hare, or as the case shall be] be the said A. O. being no ways qualified by the laws of this realm, to have the said hare in his custody or possession; against the form of the statute in that case made and provided: These are therefore to command you, to bring the said A. O. before me or some other of his majesty's justices of the peace for the said county, to answer the premises, and to be further dealt withal according to law. Given under my hand and seal, the ———— day of ———— in the ———— year, &c.

K. Warrant to levy 5 l. on the goods of a higler convicted of having game in his custody; on the 5 An. c. 14. s. 2.

Westmorland. } To the constable of—

WHEREAS A. O. of——— in the parish of——— in the county aforesaid, higler, is on this present——— day of——— in the——— year of the reign of——— duly convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. on the——— day of——— in the——— year of——— at the parish of——— aforesaid, in the county aforesaid, had in his custody and possession one hare, he the said A. O. being no way qualified by the laws of this realm to have the said hare in his custody or possession, against the form of the statute in that case made, by reason whereof, he the said A. O. hath forfeited the sum of 5 l. These are therefore to require you to levy the said sum of 5 l. by distress of the goods of him the said A. O. and if within the space of [five] days next after such distress by you taken, the said sum of 5 l. together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained as aforesaid, and out of the money arising by such sale, that you do pay one half of the said sum of 5 l. to A. I. of——— yeoman, who informed me of the said offence, and the other half to the poor of the parish of——— aforesaid, within which parish the said offence was committed; returning to him the said A. O. the overplus on demand, the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And if sufficient distress cannot be had of the goods of the said A. O. that you certify the same to me together with the return of this precept. Given under my hand and seal the—— day of—— in the—— year of——

L. Commitment on the same for want of distress ;
on the 5 *An. c. 14. f. 2.*

Westmorland. { To the constable of——in the said county,
and to the keeper of the house of
correction at——in the said county.

WHEREAS A. O. of——in the said county,
higler, was on the——day of——duly convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. of——a credible witness, for that he the said A. O. on the——day of——in the——year of——at the parish of——aforesaid, in the county aforesaid, had in his custody and possession one hare, he the said A. O. being no way qualified by the laws of this realm to have the said hare in his custody or possession, against the form of the statute in that case made, by reason whereof he the said A. O. hath forfeited the sum of 5 l. And whereas on the said——day of——in the year aforesaid, I did issue my warrant to the constable of——to levy the said sum of 5 l. by distress and sale of the goods of him the said A. O. and to distribute the same according as is directed by the said statute : And whereas it duly appears to me, as well on the oath of the said constable of——as otherwise, that he the said constable of——hath used his best endeavours to levy the said sum on the goods of the said A. O. as aforesaid, but that no sufficient distress can be found whereon to levy the same ; These are therefore to require you the constable of——aforesaid, to carry the said A. O. to the said house of correction at——aforesaid, and deliver him to the said keeper thereof, together with this precept. And you the said keeper are hereby commanded to receive into your custody in the said house of correction him the said A. O. and him there safely to keep for the space of three months, without bail or mainprize ; and for your so doing this shall be your sufficient warrant. Given under my hand and seal the——day of——

M. Mitimus for carrying a gun; on the 33 H. 8.
c. 6. from Mr. Dalton.

Westmorland.

{ To the keeper of his majesty's gaol at
—— in the county of——aforesaid,
and to his deputy or deputies there,
and to every of them.

FORASMUCH as this present day, A. I. of——
yeoman, and B. I. of——yeoman, did arrest and
bring before me at——in the said county, one A. O. late
of——in the said county, taylor, whom they had seen and
found the same day (as they said) shooting in a hand gun,
charged with powder and hail shot, at a coney, in a certain
place in——within the said county, called——contrary to
the law of the realm, and thereupon prayed the justice might be
done in that behalf: I John Moore, esquire, being the next
justice of the peace in the said county to the place aforesaid, did
then at——aforesaid, upon the said request, take the examina-
tion of the said A. O. and did also then and there hear the
proofs of them the said A. I. and B. I. touching the said of-
fence; And for that it did then manifestly appear unto me as
well by the testimonies of them the said A. I. and B. I. as also
by the plain confession of him the said A. O. that he the said
A. O. had not then lands, tenements, fees, annuities or offices,
to the yearly value of an hundred pounds, and that he had shot
in the said hand gun in the manner and form as is aforesaid:
I do send you herewithal the body of him the said A. O. as
lawfully convicted of the said offence before me, requiring you
in his majesty's name, to receive him into your said gaol, and
him there safely to keep, until he shall have truly paid the
pain and forfeiture of 10 l. laid upon him for his said offence
by the statute made in the three and thirtieth year of the
reign of king Henry the eighth; that is to say, the one moiety
thereof to our sovereign lord the king, and the other moiety to
them the said A. I. and B. I. the first bringers of him before
me. And this shall be your sufficient warrant in this behalf.
Hereof fail you not, as you will answer for your contempt at
your peril. Given under my hand and seal at——aforesaid,
in the county aforesaid, the——day of——in the——year of
the reign of——.

N. Record of the conviction for carrying a gun;
on the 33 H. 8. c. 6. from Mr. Dalton.

Wemorland. **B**E it remembred, that on the——day
of——in the——year of the
reign of——A. I. of——yeoman, and B. I. of
——yeoman, one A. O. late of——in the county
aforesaid, taylor, found and saw, at——in the county
aforesaid, the day and year aforesaid, with a hand gun
charged with gun-powder and leaden hail shot, shooting and
discharging the said gun, at a certain coney then being in a
certain place there, called——against the form of the
statute in that case made and provided; and therefore the
day and year aforesaid, him the said A. O. at——afore-
said, they did arrest, and at——aforesaid before me
——esquire, one (and next unto the said place called
——) of the justices of our said lord the king, assigned
to keep the peace in the said county, and also to hear and de-
termine divers trespasses and other misdemeanors in the same
county committed, then with them did bring, requesting there-
upon justice to be done; which request being heard, I the
said J. P. at——aforesaid, the day and year aforesaid,
duly thereupon have examined the aforesaid A. O. at——
aforesaid, and the proofs of the aforesaid A. I. and B. I. in
this behalf have taken: And because that as well by the proofs
aforesaid, as by the confession of him the said A. O. at
——aforesaid, then and there it hath appeared to me
manifestly, that the aforesaid A. O. at——aforesaid,
when he had not in his own right, nor in the right of his
wife, to his own use, nor any other to the use of the said
A. O. had lands, tenements, fees, annuities or offices to the
yearly value of one hundred pounds, in the hand gun afore-
said, in manner and form aforesaid, did shoot, against the
form of the statute aforesaid; I the said J. P. the afore-
named A. O. at——aforesaid, the day and year afore-
said, to the next gaol of our said lord the king, at——
in the county aforesaid (of the trespass aforesaid before me
convicted) have committed, there to remain until the penalty
and forfeiture of 10 l. of lawful money of Great Britain,
he shall truly pay or cause to be paid, to wit, one moiety
thereof to our said lord the king, and the other moiety there-
of to the said A. I. and B. I. the first bringers of the said
A. O. before me as is aforesaid. In witness of all which
I the aforesaid J. P. to these presents have put my seal.

Given

Given at ———— aforesaid, the day and year first above written.

- O. Conviction for killing deer, from *Tremaine's Entries*, 328, 329. which conviction was on the 13 C. 2. c. 10. but is here altered to grounds inclosed, to bring the offence within the 3 W. c. 10. which is done by the addition only of that single word [inclosed] with the alteration of the penalty.

Cumberland. **B**E it remembred that on the third day of September in the year of the reign of our lord Charles the second now king of, &c. the thirty-second, one Benjamin Granger of ———— gentleman, cometh before me John Aglionby, esquire, one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county of C. at G. in the same county, and giveth me to understand and be informed, that one James Dobson, late of ———— J. B. late of ———— and L. M. late of ———— on the 25th day of August in the year of the reign of our said lord the now king, the 32d aforesaid, in a certain park then of the most noble Henry duke of Norfolk, called Graystock park, in the parish of Graystock, in the said county, then and long before and yet being ground inclosed, wherein deer then were and long before had been usually kept, unlawfully hunted, and a certain fallow deer of the said duke then in the same park killed, took, and carried away, without the consent of the said duke then owner of the said park, or of Andrew Huddleston, esquire, then being chiefly intrusted with the custody of the same park, against the form of the statute in such case made and provided: And afterwards, to wit, on the aforesaid third day of September in the 32d year aforesaid, two credible witnesses, that is to say, J. H. of ———— and T. B. of ———— came before me the said justice assigned, &c. at G. aforesaid, and before me the said justice assigned, &c. upon their oath on the holy gospel of god to them then and there by me the aforesaid justice assigned, &c. by the authority of the statute aforesaid administred and given, do depose, swear, and say, and each of them doth depose, swear, and say, upon their oath aforesaid, that the aforesaid J. D. J. B. and L. M. on the aforesaid 25th day of August in the 32d year aforesaid, in the aforesaid park and ground inclosed of the aforesaid duke of Norfolk, in the parish of Graystock aforesaid, unlawfully hunted, and the aforesaid fallow deer of him the said duke, then in the said park and ground inclosed,

took, killed, and carried away, without the consent of the same duke then owner of the said park and ground inclosed, or of the aforesaid A. H. esquire, then with the custody of the same park and ground inclosed as is aforesaid chiefly entrusted. And thereupon they the aforesaid J. D. J. B. and L. M. on the said 3d day of September in the 32d year aforesaid, before me the said justice assigned, &c. by the oath of two credible witnesses aforesaid, according to the form of the statute aforesaid, are, and every of them is convicted. And for the offence aforesaid, every of them them the aforesaid J. D. J. B. and L. M. according to the form of the statute aforesaid, hath severally forfeited the sum of 30l. one third part thereof to the aforesaid B. G. the informer in this behalf as is aforesaid, another third part thereof to the use of the poor of the said parish of G. within which parish the offence aforesaid was committed, and the other third part thereof to the duke aforesaid, owner of the deer aforesaid. In witness whereof I the aforesaid justice to this present record of the conviction as aforesaid, have set my hand and seal, at G. aforesaid, on the day and year first abovementioned.

John Aglionby.

P. Warrant of distress for hunting and killing deer; on the 3 W. c. 10. s. 2.

Westmorland. } To——

WHEREAS A. O. of——yeoman, is this day duly convicted before me J. P. esquire, one of his majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers trespasses and other misdemeanors in the said county committed, by the oath of A. W. of——yeoman, a credible witness, for that he the said A. O. on the——day of——in the——year of——in a certain park, then of Sir P. M. baronet, in the parish of——in the said county, then and long before and yet being ground inclosed, wherein deer then were and long before had been usually kept, unlawfully did hunt, and a certain fallow deer of the said Sir P. M. baronet, then in the same park did kill, take, and carry away, without the consent of the said Sir P. M. baronet, then owner of the said park, or of any other person then chiefly intrusted with the custody of the same park, against the form of the statute in such case made and provided; by reason whereof he the said A. O. hath forfeited the sum of 30l. to be distributed as herein after is mentioned.

These

These are therefore in his said majesty's name to command you to levy the said sum by distress of the goods and chattels of him the said A. O. And if within the space of [six] days next after such distress by you taken, the said sum of 30 l. together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained as aforesaid; and out of the money arising by such sale, that you do pay one third part of the said sum of 30 l. to A. I. of——in the said county, yeoman, who informed me of the said offence; and one third part unto the churchwardens or overseers of the poor of the said parish of——for the use of the poor of the said parish, and the other third part to the said——owner of the said deer; returning to him the said A. O. the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be had or found, by and on which the said sum of 30 l. may be levied, you are hereby required to certify the same to me, within two days after the date of this present warrant. Given under my hand and seal, at——in the county aforesaid, the——day of——in the——year of the reign of——.

Q. Commitment for want of distress, for hunting and killing deer; on the 3 W. c. 10. f. 2.

Westmorland. { To the constable of——in the said county, and to the keeper of the common gaol at——in the said county, and to the chief officer of the market town of——in the said county, and to every of them.

WHEREAS A. O. of——labourer, was on the——day of——duly convicted before me J. P. esquire, one of his majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, by the oath of A. W. of——yeoman, a credible witness, for that he the said A. O. on the——day of——in the——year——in a certain park then of——esquire, in the parish of——in the said county, then and long before and yet being ground inclosed wherein deer then were and long before had been usually kept, unlawfully did hunt, and a certain fallow deer of the the said——esquire, then in the same park did kill, take, and carry away, without the consent

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sent of the said——then owner of the said park, or of any other person then chiefly entrusted with the custody of the same park, against the form of the statute in such case made and provided; by reason whereof he the said A. O. hath forfeited the sum of 30 l. And whereas on the said——day of——in the year aforesaid, I did issue my warrant to the constable of——to levy the said sum of 30 l. by distress of the goods and chattels of him the said A. O. and to pay over the said sum of 30 l. according as is directed by the statute aforesaid; And whereas it duly appears to me, as well on the oath of the said constable of——as otherwise, that he the said constable of——hath used his best endeavours to levy the said sum of 30 l. on the goods and chattels of the said A. O. as aforesaid, and that no sufficient distress can be found whereon to levy the same: Therefore in pursuance of the statute aforesaid, I do hereby command you the said constable of——him the said A. O. to apprehend and safely to convey to the said common gaol at——aforesaid, in the county aforesaid, and him to deliver to the keeper thereof aforesaid, together with this precept: And I do hereby command you the said keeper of the gaol aforesaid, to receive into your custody in the said gaol him the said A. O. and him there safely to keep for the space of one whole year; saving that within the said year you deliver him the said A. O. to the chief officer of——being the next market town next adjoining to the place where the said offence was committed, or to his under officer or officers, together with this precept, who are hereby respectively required to set the said A. O. in the pillory in the said market town by the space of one hour on some market day. And hereof fail not, as you will respectively answer the same at your perils. Given under my hand and seal, at——in the said county, the——day of——in the year——.

R. Warrant to search for venison or skins; on the
3 W. c. 10. s. 3.

Westmorland. { To the constable of——

WHEREAS A. I. of——in the said county, yeoman, hath this day made oath before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, that divers fallow deer have of late been unlawfully killed in, and taken and carried away from the park and ground inclosed of——at——in the said county, and that he the said A. I. hath just cause to suspect, and doth suspect, that
venison

venison or the skins of deer, or toyls whereby to take and kill deer are concealed in the houses, outhouses, or other places belonging to the said houses of A. O. of—yeoman, and B. O. of—yeoman, at—aforsaid in the county aforsaid: These are therefore in his said majesty's name, and by virtue of the statute in that case made and provided, to require you that you do forthwith upon sight hereof, enter into and search the said houses, outhouses, and other places belonging to the said houses, of them the said A. and B. O. at—aforsaid; and if on such search you shall there find any venison, or skin of any deer, or toyls aforsaid, that you do apprehend the person or persons, in whose houses, outhouses, or other places aforsaid, such venison, skin, or toyls shall be found, and him or them so apprehended do carry before some of his said majesty's justices of the peace in and for the said county, to be examined concerning the premisses, and further dealt withal according to law. Given under my hand and seal, the—day of—in the year—.

Gaming.

Gaming not an offence at common law.

MR. Dalton says, that playing at cards and dice, and the like, are not prohibited by the common law; neither are they *mala in se*, of their own nature, but only prohibited by statute. *Dalt. c. 46.*

Gaming house a nuisance.

2. But it hath been said, that all common gaming houses are nuisances in the eye of the law, as being great temptations to idleness, and apt to draw together numbers of disorderly persons. *1 Haw. 198.*

Gaming houses prohibited by the 33 H. 8.

3. By the statute of the 33 H. 8. c. 9. No person shall for his gain, lucre, or living, keep any common house, alley, or place of bowling, coyting, cloysh, cayls, half bowl, tennis, dicing table, or carding, or any unlawful game; on pain of 40 s. a day. *f. 11.*

But it was resolved upon this clause, in the third year of J. 1. that if the guests in an inn or tavern, call for a pair of dice or tables, and for their recreation play with them, or if any neighbours play at bowls for their recreation, or the like, these are not within the statute; for altho' the games be used in any inn, tavern, or other house, yet if the house be not kept for gaming, lucre, or gain, but they play only for recreation, and for no gain to the owner of the house, this is not within the statute,

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statute, nor is such person that plays in such house that is not kept for lucre or gain, within the penalty of that law. *Dalt. c. 46.*

And moreover, by the same statute it is further enacted, that every person using and haunting any the said houses and plays, and there playing, shall forfeit 6s. 8d. 33 *H. 8. c. 9. f. 12.*

And all and every justices of the peace, mayors, sheriffs, and other head officers, may enter all such houses and places, where such games shall be suspected to be holden; and as well the keepers of the same, as also the persons there resorting and playing, may take, arrest, and imprison, and keep in prison, until the said keepers have found sureties to the king's use, to be bound by recognizance or otherwise, no longer to use, keep, or occupy any such house, play, game, alley, or place; and also that the persons there so found, be in like case bound by themselves, or with sureties, no more to play, haunt, or exercise from thenceforth, in, at, or to any of the said places, or at any of the said games. *id. f. 14.*

And the mayors, sheriffs, bailiffs, constables, and other head officers within every city, borough, or town, shall make due search weekly, or at the furthest once a month, in all places where any such houses or places shall be suspected to be kept; and if they shall not make such search at the farthest once a month, if the case so require, every such person offending shall forfeit 40s. for each month. *id. f. 15.*

And by the same act, no manner of artificer, handicraftsman, husbandman, apprentice, labourer, servant at husbandry, journeyman, or servant of artificer, mariners, fishermen, watermen, or any serving man, shall play at the tables, tennis, dice, cards, bowls, clash, coytting, logating, or any other unlawful game, out of *Christmas*, on pain of 20s. and in *Christmas* to play at the said games only in their master's houses, or in their master's presence; and also no person shall at any time play at bowls in open places out of his garden or orchard, on pain of 6s. 8d. *id. f. 16.*

But any master may license his servant to play at cards, dice, or tables with himself, or with any other gentleman openly in his house, or in his presence. *id. f. 22.*

And any nobleman, or other person having 100l. a year, may command or license his servants, or family of his house, to play within the precinct of his house, garden, or orchard, at cards, dice, tables, bowls, or tennis.

as well among themselves, as others repairing to the same house. *id.* *f.* 23.

And all justices of the peace, mayors, bailiffs, sheriffs, and other head officers, and every of them, *finding or knowing* any person using unlawful games, contrary to this act, may commit every such offender to ward, there to remain without bail or mainprise, till he be bound by obligation to the king's use, in such sum as by the discretion of the said justices, or other such officers shall be thought reasonable, that they shall not from thenceforth use such unlawful games. *id.* *f.* 16.

And by the 2 *G. 2. c.* 28. Where it shall be *proved on the oath of two witnesses* before any justice of the peace, as well as where he shall find upon his own view, that any person hath used any unlawful game contrary to the said statute, the said justice shall have power to commit him to prison without bail, unless and until he shall enter into recognizance, with sureties, or without, at the discretion of the justice, that he shall not from thenceforth play at or use such unlawful game. *f.* 9.

And where any the forfeitures abovementioned shall be found within the precincts of any leet, the lord shall have one half, and the other half shall be to him that shall sue in any of the king's courts; and elsewhere, they shall be half to the king, and half to him that shall sue in like manner. 33 *H. 8. c.* 9. *f.* 18.

But by the 31 *El. c.* 5. All suits to be pursued upon any statute (that is, any statute then in force) for using any unlawful game, shall be sued and prosecuted, or otherwise heard and determined, in the general quarter sessions or assizes of the county where the offence shall be committed, or in the leet within which it shall happen, and not in any wise out of the county. *f.* 7.

And no privilege of parliament shall be allowed to any person, against whom a prosecution shall be commenced, for keeping any common gaming house, or place for playing at any prohibited game. 18 *G. 2. c.* 34. *f.* 7.

Gaming in public houses prohibited by the 30 *G. 2. c.* 24.

4. By the 30 *G. 2. c.* 24. If any person licensed to sell any sorts of liquors, or who shall sell or suffer the same to be sold in his house, outhouse, ground, or apartment thereto belonging, *shall knowingly suffer* any gaming with cards, dice, draughts, shuffle boards, Mississippi, or billiard tables, skittles, nine pins, or with any other implement of gaming, in his house, outhouse, ground, or apartment thereto belonging, by any journeyman, labourers, servants, or apprentices; and shall be convicted thereof

thereof on confession, or oath of one witness, before one justice, within six days after the offence committed; he shall forfeit for the first offence 40 s. and for every other offence 10 l. by distress by warrant of such justice; three fourths of which shall be to the churchwardens for the use of the poor, and one fourth to the informer. *f. 14.*

And if any journeyman, labourer, apprentice, or servant, shall game in any house, outhouse, ground, or apartment thereto belonging, wherein any liquors shall be sold; and complaint thereof shall be made on oath before one justice where the offence shall be committed: he shall issue his warrant to the constable or other peace officer of the place wherein the offence is charged to have been committed, or where the offender shall reside, to apprehend and carry the offender before some justice of the place where the offence shall be committed, or where the offender shall reside; and if such person shall be convicted thereof by the oath of one witness or confession, he shall forfeit not exceeding 20 s. nor less than 5 s. as the justice shall order, every time he shall so offend and be convicted as aforesaid, one fourth to the informer, and three fourths to the overseers for the use of the poor; and if he shall not forthwith pay down the same, such justice shall commit him to the house of correction or some other prison of the place where he shall be apprehended, to be kept to hard labour for any time not exceeding one month, or until he shall pay the forfeiture. *f. 15.*

And any justice unto whom complaint upon oath shall be made, of any offence committed against this act, shall issue his warrant for bringing before him or some other justice of such place, the person charged with such offence; and the justice before whom he is brought shall hear and determine the matter, and proceed to judgment and conviction: and if it shall appear upon oath to the satisfaction of such justice, that any person within his jurisdiction can give material evidence on behalf of the prosecutor or of the person accused, and who will not voluntarily appear; he shall issue his summons to convene him to give his evidence; and if he shall neglect or refuse to appear on such summons, and no just excuse shall be offered, then (on proof upon oath of the summons having been duly served upon him) he shall issue his warrant to bring such witness before him: and on his appearance, if he shall refuse to be examined on oath, without offering just cause for such refusal, the justice shall commit him to the publick prison for any time not exceeding three months. *f. 16.*

Gaming.

And in all proceedings on this act, any person shall be admitted to be a witness, notwithstanding his being an inhabitant of the place wherein the offence shall have been committed. *f. 18.*

And the justice before whom any person shall be convicted upon this act, shall cause the conviction to be drawn up in the form or to the effect following; */*

To wit. **B**E it remembred, that on this — day of — in the — year of his majesty's reign A. B. is convicted before — of his majesty's justices of the peace for the said county of — [or, for the — riding, or division, of the said county of — or, for the city, liberty, or town of — as the case shall be] for — and — the said — do adjudge him, or her, to pay and forfeit for the same, the sum of — Given under — the day and year aforesaid.

The same to be written upon parchment, and transmitted to the next sessions, to be filed amongst the records; and if any person shall appeal to the said sessions, the justices there shall, upon receiving the said conviction, proceed to hear and determine the matter. *f. 19.*

And no certiorari shall be granted, to remove any proceedings on this act. *f. 20.*

And if any person convicted of any offence punishable by this act, shall think himself aggrieved by the judgment of the justice before whom he shall have been convicted, he may appeal to the next sessions, and the execution of the judgment shall in such case be suspended, the person convicted entering into recognizance at the time of the conviction, with two sureties in double the sum he shall have been adjudged to pay, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the said sessions: and the sessions shall award such costs as shall appear just and reasonable to be paid by either party; and if the judgment shall be affirmed, the appellant shall immediately pay the sum adjudged to be forfeited together with such costs as the court shall award, or in default thereof shall suffer the pains and penalties by this act inflicted upon persons respectively who shall neglect to pay or shall not pay the forfeitures by this act to be paid. *f. 21.*

And no person punished by this act, shall be punished by any other law. *f. 22.*

5. By the 25 G. 2. c. 36. any house, room, garden, or other place kept for publick dancing, musick, or other

entertainment

Gaming house
within London
and 20 miles
thereof.

entertainment of the like kind, in *London*, or within 20 miles thereof, without licence as hereafter following (except the theatres of *Drury-lane*, *Covent Garden*, the *Hay-market*, and other entertainments exercised by letters patents or licence of the crown, or of the lord chamberlain) shall be deemed a disorderly house or place, and the keeper thereof shall forfeit 100 l. with full costs to him who shall sue (in six months) in any of the courts at *Westminster*. And the person who shall appear to act as master, or as having the management of such disorderly house, shall be deemed a keeper thereof.

Which said licence shall be granted at the last preceding *Michaelmas* sessions, and shall be signed and sealed by four justices in open court, and afterwards be publicly read by the clerk of the peace, with the names of the justices subscribing the same; and no licence shall be granted at any adjourned sessions; nor shall any fee be taken for the same. And there shall be inserted in such licence, and made conditions thereof, that the words following shall be affixed in large capital letters over the door or entrance of every such licensed house or place, viz. *Licensed pursuant to act of parliament of the twenty-fifth of king George the second*; and that it shall not be opened before five in the afternoon. And in case of a breach of either of the said conditions, the licence shall be forfeited, and revoked by the justices at the next sessions, and shall not be renewed.

And to encourage prosecutions against persons keeping bawdy houses, gaming houses, or other disorderly houses, the constable, on notice given him in writing by any two inhabitants of the parish, paying scot and lot, of any person keeping such house, shall forthwith go with them to a justice of the peace; and shall (on their making oath that they believe the contents of such notice to be true, and entring into a recognizance of 20 l. each to produce evidence of the offence,) enter into a recognizance of 30 l. to prosecute with effect such person at the next sessions or assizes, as to the justice shall seem meet: and on the constable entring into such recognizance, the justice shall issue his warrant for bringing the accused persons before him, and shall bind them over to appear at the said sessions or assizes, and shall also, if he thinks fit, demand and take surety for their good behaviour in the mean time.

And if the constable shall neglect or refuse, upon such notice, to go before a justice, or to enter into recognizance,

zance, or shall be wilfully negligent in carrying on the prosecution, he shall forfeit 20 l. to each of the said inhabitants.

And on trial, any person may give evidence against the defendant, notwithstanding his being a parishioner, or having entred into such recognizance.

And the constable shall be allowed all the reasonable expences of the prosecution, to be ascertained by two justices; and shall be paid the same by the overseers of the poor: and if such person be convicted, the overseers shall also forthwith pay 10 l. to each of such inhabitants, on pain of forfeiting double to the said persons.

And no indictment of such offence shall be removed by certiorari.

Loſing or winning 10 l. or upwards at a time, or 20 l. in 24 hours.

6. By the 9 *An. c. 14.* Any person who shall at any time or sitting, by playing at cards, dice, tables, or other game whatsoever, or by betting on the sides of such as do play, *lose* to any one or more persons so playing or betting, in the whole the sum or value of 10 l. and shall pay or deliver the same, or any part thereof; the person so losing and paying or delivering the same, shall be at liberty in three months to sue for and recover the same with costs, in any court of record: and if he shall not sue in three months, it shall be lawful for any person to sue for and recover the same and treble value, with costs; half to such person who shall sue, and half to the poor. *f. 2.*

And every person who shall so be liable to be sued for the same, shall be obliged and compellable to answer on oath such bill as shall be preferred against him, for discovering the sum of money or other thing so won. 9 *An. c. 14. f. 3.* 18 *G. 2. c. 34. f. 3.*

Or other game whatsoever] *M. 15 G. 2. Goodburn and Marley.* It was determined, that *horse races* are within these general words. *Str. 1159.* So also in the case of *Blaxton and Pye, E. 6 G. 3. 2 Wilson 309.*

And in the case of *Lynall and Longbotham, M. 30 G. 2.* it was admitted on all hands that a *foot race* also is within the statute, and that a footman running against time is a foot race; but in this case, for a flaw in the declaration, in not laying the fact close enough to the words of the statute, the defendant had judgment. 2 *Wilson 36.*

And by the same statute of the 9 *An. c. 14.* If any person shall, at any one time or sitting, *win* of any one or more

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more person or persons, above the sum or value of 10 l.; he shall upon conviction on indictment or information, forfeit five times the value of the sum of money or other things so won, to be recovered by such person as shall sue for the same. *f. 5.*

And by the 18 G. 2. c. 34. If any person shall win or lose at play, or by betting, at any one time, the sum or value of 10 l. or within the space of 24 hours the sum or value of 20 l.; he shall be liable to be indicted for such offence, in six months, either in the king's bench or at the assizes; and being convicted, shall be fined five times the value of the sum won or lost, which (after such charges as the court shall judge reasonable, allowed thereout to the prosecutor and evidence) shall go to the poor. *f. 8.*

And if any offender shall discover another offender, so that he be convicted, the discoverer shall be discharged from all penalties by reason of such offence, if not before convicted thereof, and shall be admitted as an evidence to prove the same. *f. 9.*

But nothing in this act shall repeal the aforesaid act of 9 An. id. c. 10.

7. If any person shall play at cards, dice, tables, tennis, bowls, kittles, shovelboard, or any other pastime or game whatsoever (other than for ready money) or bet on the sides of such as shall play, and shall lose any sum or other thing, exceeding 100 l. at any one time or meeting, upon ticket, or credit, or otherwise, and shall not pay down the same at the time when he shall lose the same; in such case he shall not be bound to make it good, but the contract for the same, and for every part thereof, and all assurances and securities for the same shall be void; and the winner shall forfeit treble value of all such sums as he shall so win above 100 l. half to the king, and half to him that shall sue in one year in any of the courts of record at Westminster, with treble costs. 16 G. 2. c. 7. *f. 3.*

In the case of *Humphries and Rigby*, M. 1698. A bill was brought, to be relieved against a bond for money won at all fours. The plaintiff was a distiller, and the defendant a tapster at a bowling green. And it appearing that the defendant laid the cards, and turned up the knave of clubs, which was Jack, several times together; and being an unreasonable sum for such persons to venture; the plaintiff was relieved, and the bond ordered to be delivered up, altho' this case was not within the statute, the bond being for less than 100 l. For equity always re-

Securities to be
void.

lieved before the statute, where any fraud appeared. 2 *Abr. Eq. Cas.* 184.

8. And all notes, bills, bonds, judgments, mortgages, or other securities, where the whole or any part of the consideration shall be for money or any other valuable thing, won by playing at cards, dice, tables, tennis, bowls, or other game whatsoever; or by betting on the sides of such as do game; or for the reimbursing or repaying any money knowingly lent or advanced, at the time and place of such play, to any person so gaming or betting, or that shall (during such play) so play or bett, —shall be void: And where such securities shall be of lands, or such as incumber or affect the same; they shall enure and be to the sole use and benefit of, and devolve upon such person as might have such lands, in case the said grantor, or person so incumbering the same, had been dead: And all conveyances to hinder them from devolving on such person, shall be void. 9 *An. c.* 14. *f.* 1.

Securities] *H.* 19 *G.* 2. *Barjeau* and *Walmfley*. The plaintiff and defendant gamed together, at tossing up for five guineas at a time. And the plaintiff having won all the defendant's ready money lent him ten guineas at a time, and won it, till the defendant had borrowed 120 guineas. In an action for money lent, it was insisted for the defendant, that by the 9 *An. c.* 14. the plaintiff could maintain no action; for by that act, all securities for money lent to game with shall be void; and the borrowing on an agreement to pay, is a security. But *Lee* Ch. J. held that this was not a case within the act, for there is not the word *contract*, as in the statute of usury; and the word *securities*, as it stands in this act, must mean lasting liens upon the estate. The parliament might think there would be no great harm in a parol contract, where the credit was not like to run very high; and therefore confined the act to written securities. Wherefore the plaintiff obtained a verdict for 126 l. *Str.* 1249.

In the case of *Rawdon* and *Shadwell*, *Apr.* 23. 1755. A bill was brought by the plaintiff for an injunction, and that the defendant might deliver up the plaintiff's bond for 1150 l. for money lost at play, and might refund a sum of 150 l. paid by the plaintiff in part of the said bond. It appeared, that the plaintiff was a lieutenant, and the defendant a captain in Cotterel's regiment; and about 14 years ago, being quartered at Leeds in Yorkshire, the defendant

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endant won of the plaintiff in one evening the sum of 1150l. The plaintiff was under age; and being so, gave a bond for the money to the defendant; and afterwards, when of age, paid 150l. in part. It was insisted for the plaintiff, that the securities by the statute of the 16 C. 2. were totally void, and ought to be delivered up; that the property of an infant in money lost at play, is not altered, and therefore trover would lie; and the statute of the 9 An. was mentioned, and a case in 2 Mod. 91. For the defendant, it was urged, that the plaintiff on the same evening won of another in the same company, to wit, the surgeon of the regiment, a larger sum than the 1150l. which has been paid by him. That fair gaming is not *malum in se*. It is only prohibited *sub modo*. That the case cited was of money lost with false dice, which the court takes cognizance of as a cheat. That the statute of An. gives the court jurisdiction only as to a discovery. That as to the 150l. it was paid after he came of age; and if the court should order the defendant to refund at the distance of 14 years, it would occasion an infinite number of applications. That the statute of 16 C. 2. gives no remedy to recover money already paid. That there has been too long an acquiescence. That money paid, even in cases of bribery and corruption, cannot be recovered at law. That the statute of An. has directed an action within three months, for money lost and paid at play.—The lord chancellor said, the decree he should make was not founded on any imputation on the character of the defendant, who had put in a very candid answer. But this is a breach of the law, from a false principle of honour. And he was of opinion, that the plaintiff was intitled to the whole relief prayed; that a party may come into this court to have a void security delivered up; that refunding the money is of course, as the statute has made the security void to all intents and purposes.

9. And any two justices may cause to come, or to be brought before them, every person whom they shall have just cause to suspect to have no visible estate, profession, or calling, to maintain themselves by, but do for the most part support themselves by gaming; and if such person shall not make it appear to the said justices, that the principal part of his expences is not maintained by gaming, they shall require of him sufficient securities for his good behaviour for 12 months, and in default of his finding such securities, shall commit him to the common gaol, until

Persons suspected
of supporting
themselves by
gaming.

until he shall find such securities as aforesaid. 9 *An. c. 14.* *f. 6.*

And if he shall, during the time for which he shall be bound, at any one time or sitting, play or bet for any sums or other thing exceeding in the whole the value of 20 s. such playing shall be deemed a forfeiture of the recognizance. *f. 7.*

Cheating.

10. If any person shall by any fraud, unlawful device, or other ill practice in playing at cards, dice, tables, tennis, bowls, kittles, shovelboard; or by cockfightings, horse races, dog matches, foot races, or other pastimes or games; or by bearing a share in the stakes; or by betting, on the sides of such as shall play, act, ride, or run as aforesaid,——win any sum or other valuable thing; he shall forfeit treble the value, half to the king and half to the party grieved (if he shall sue in six months), otherwise to any person who shall sue in one year next after the said six months, in any of the courts of record at *Westminster*, with treble costs. 16 *C. 2. c. 7. f. 2.*

And by the 9 *An. c. 14.* If any person shall by any fraud or shift, coufenage, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at cards, dice, tables, tennis, bowls, or any the games aforesaid, or bearing a share in the stakes, or betting on the sides of such as do play, win any sum of money or other valuable thing, and shall be convicted thereof upon indictment or information; he shall forfeit five times the value of such money or other thing so won, and shall be deemed infamous and suffer such corporal punishment as in cases of wilful perjury; and such penalty to be recovered by such person as shall sue for the same, by such action as aforesaid. *f. 5.*

T. 9. G. 2. K. and Luckup. The defendant was convicted on an information upon this act, which says, that he shall forfeit five times the value, to be recovered by a common informer, upon conviction. And it was moved, that a fine should be set upon the defendant, if he refused to speak with the prosecutor. But by the court, All the judgment that we can give is, *that he is convicted*; and a new action must be brought upon that judgment for the forfeiture, which was thought sufficient to deter the offenders. In the case of recusancy, there is no other judgment. And the defendant was discharged, without any fine or costs. *Str. 1048.*

Quarrelling.

11. And for the preventing such quarrels as may happen on the account of gaming; if any person shall assault

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and beat, or challenge to fight, any other person whatsoever, on account of any money won by gaming, playing, or betting, at any the games aforesaid, he shall on conviction thereof by indictment or information, forfeit to the king all his goods and chattels and personal estate whatsoever, and shall also suffer imprisonment without bail or mainprize, in the common gaol of the county where the conviction shall be had, during the term of two years. 9 *An. c. 14. f. 8.*

12. It is generally provided by the several statutes, that nothing therein shall hinder any person from playing at any the games aforesaid, within any of the king's royal palaces, where he shall then reside. Royal palaces excepted.

13. By the 10 & 11 *W. c. 17.* All lotteries are declared to be publick nuisances; and all grants, patents, and licences, for such lotteries, to be against law. Lottery, a nuisance.

f. 1.
14. No person shall expose to be played, drawn, or thrown at, or shall play, draw, or throw at any lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatsoever; and every person who shall expose to be played, drawn, or thrown at, any such lottery, play, or device, shall forfeit 500 l. one third to the king, one third to the poor, and one third with double costs to him that shall sue in the courts at *Westminster*; and the offenders shall likewise be prosecuted as common rogues, according to the statutes in that case made and provided. 10 & 11 *W. c. 17. f. 2.* Keeping or playing at a lottery.

And every person who shall play, throw, or draw at any such lottery, play, or device, shall forfeit 20 l. in like manner. *f. 3.*

And all justices of the peace, mayors, constables and other civil officers shall use their utmost endeavours to prevent the drawing of any such unlawful lottery, by all lawful ways and means; and every person who shall set up, or by writing or printing publish the setting up any such unlawful lottery, with intent to have such lottery drawn, shall forfeit 100 l. one third to the king, one third to the poor, and one third with full costs to him who shall sue in the courts at *Westminster*. 9 *An. c. 6. f. 56.*

15. Every person who shall keep any office or place, for making insurances on marriages, births, christnings, or service, or any other office or place, under the denominations of sales of gloves, fans, cards, numbers, or the queen's picture, for the improvement of small sums of

of money, shall forfeit 500 l. one third to the king, one third to the poor, and one third with full costs to him who shall sue. And every printer, or other person, who, shall by writing or printing publish the setting up or keeping any such office or place, shall forfeit 100 l. in like manner. 10 *An. c.* 26. *f.* 109.

Sales of lands
or goods; and
chances in pub-
lick lotteries.

16. Every person who shall keep, any office or place, under the denomination of sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, for the improvement of small sums of money; or shall sell or expose to sale the same or any of them, by way of lottery, or by lots, tickets, numbers, or figures; or shall make, print, advertise, or publish proposals or schemes for advancing small sums of money by several persons, amounting in the whole to large sums, to be divided among them by the chances of the prizes in some publick lottery; or shall deliver out tickets, to the persons advancing such sums, to intitle them to a share of the money so advanced, according to such proposals or schemes; or shall make, print or publish, any proposal or scheme of the like nature, under any denomination whatsoever,——and shall be thereof convicted, on oath of one witness, by two justices where the offence shall be committed, or the offender shall be found, he shall, over and above any penalties by any former act made against private lotteries, forfeit 500 l. one third to the king, one third to the informer, and one third to the poor, to be levied by distress and sale by warrant of such justices, and shall also by such justices be committed to the county gaol without bail for one whole year, and from thence till the said sum of 500 l. shall be paid. Provided that persons aggrieved may appeal to the next quarter sessions. And every person who shall be adventurer in, or any way contribute on the account of any such sales, lotteries, proposals, or schemes, shall forfeit double the sum contributed, with costs, half to the king, and half to him that shall sue in the courts at Westminster. 8 *G. c.* 2. *f.* 36, 37.

And by the 12 *G. 2. c.* 28. If any person shall erect, set up, continue, or keep, any office or place, under the denomination of a sale of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things by way of lottery, or by lots, tickets, numbers or figures, cards, or dice; or shall make, print, advertise, or publish proposals or schemes for advancing small sums by several persons, amounting in the whole to large sums,

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to be divided among them by chances of the prizes in some publick lottery established by act of parliament, or shall deliver out tickets to the persons advancing such sums, to intitle them to a share of the money so advanced, according to such proposals or schemes; or shall expose to sale any houses, lands, advowsons, presentations to livings, plate, jewels, ships, or other goods, by any game, method, or device whatsoever, depending upon, or to be determined by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatsoever;—he shall, on conviction before any justice of the peace (or mayor) on the oath of one witness, or view of such justice, or confession, forfeit 200 l. by distress and sale, by warrant of one justice of the county or town where the offence shall be committed; which said forfeiture (after deducting reasonable charges of the prosecution) shall go one third to the informer, and two thirds to the poor of the parish (except in *Bath*, where the said two thirds shall go to the poor of the hospital there.)

f. 1.

And if the offender shall not have sufficient goods, whereon to levy the penalties, or shall not immediately pay or give security for the same; the justice before whom he shall be convicted, may commit him to the common gaol, not exceeding six months. f. 8.

And if any witness shall neglect or refuse to appear, upon summons, or shall refuse to give evidence, or give false evidence; he shall forfeit 50 l. by distress, by warrant of the person issuing such summons; and if he have not sufficient goods whereon to levy the 50 l. he shall be committed to the common gaol for six months. 18 G. 2.

c. 34. f. 4.

But if any person think himself aggrieved by the judgment of any justice or mayor, he may appeal to the next sessions, giving reasonable notice to the prosecutor, and entering into a recognizance before some justices of the peace where the conviction was made, with two sureties, on condition to try such appeal at such next sessions. And if the conviction shall be affirmed, the party appealing shall pay to the prosecutor treble costs. 12 G.

2. c. 28. f. 5.

And no conviction shall be quashed by the sessions for want of form; nor shall be removed by certiorari, till after determination in the sessions. *id.* f. 6.

And

And if any justice, or mayor, shall neglect his duty herein; he shall forfeit 10 l. with full costs, half to him that shall sue (in six months) in any court of record or at the assizes, and half to the poor. *id. f. 9.*

Moreover, every such sale of houses, lands, advowsons, presentations, plate, jewels, ships, goods, or other things, by any game, lottery, machine, engine, or other device, depending upon any chance or lot, shall be void; and the same being exposed to sale in manner aforesaid, shall be forfeited to such person as shall sue for the same in any court of record, or at the assizes. *id. f. 4.*

And, finally, every person who shall be an adventurer in any of the said games, lotteries, or sales, shall forfeit 50 l. in like manner. *id. f. 3.*

Ace of hearts,
faro, basset, and
hazard.

17. The games of ace of hearts, faro, basset, and hazard, shall be deemed games, or lotteries by cards or dice; and every person who shall set up, or keep these games, shall be liable to all the abovementioned penalties, for setting up or keeping any the games or lotteries in this act mentioned. 12 G. 2. c. 28. *f. 2.*

And every person who shall play, set at, stake, or punt at any of the said games, shall forfeit 50 l. in like manner. *f. 3.*

Passage:

18. Also the game of passage, and every other game with one or more die or dice, or with any other instrument, engine, or device in the nature of dice, having one or more figures or numbers thereon (back-gammon, and the other games played with the back-gammon tables, only excepted) shall be deemed games or lotteries by dice, within the said act of 12 G. 2. c. 28.—13 G. 2. c. 19. *f. 9.*

Roly poly.

19. Also by the 18 G. 2. c. 34. No person shall keep any house, room, or place for playing, or suffer any person within such place, to play at roly poly, or any other game with cards or dice already prohibited by the laws of this realm; and if any person shall keep such house, or suffer any person to play at roly poly, or other game with cards or dice prohibited by law, he shall be liable to the penalties and prosecution, as by the said act of the 12 G. 2. c. 28.—18 G. 2. c. 34. *f. 1.*

And if any person shall play at roly poly, or any game with cards or dice prohibited by law; he shall be liable to the penalties and prosecution, as by the said act of the 12 G. 2.—18 G. 2. c. 34. *f. 2.*

Foreign lotteries.

20. If any person shall, by colour of any grant from any foreign prince or state, set up any lottery, or undertaking in

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in the nature of a lottery, under any denomination whatsoever ; or shall make, print, or publish any proposal for any such lottery or undertaking ; or shall sell or dispose of any ticket in any foreign lottery ; and shall be convicted thereof, on oath of one witness, before two justices where the offence shall be committed, or the offender shall be found, he shall over and above any penalties by former acts against unlawful lotteries, forfeit 200 l. one third to the king, one third to the informer, and one third to the poor, to be levied by distress by warrant of such justices ; and shall also by them be committed to the county gaol for one year, and from thence till the said sum of 200 l. be paid : Provided, that persons aggrieved may appeal to the next quarter sessions. 9 G. c. 19. s. 4, 5.

And by the 6 G. 2. c. 35. If any person shall sell, procure, or deliver any ticket, receipt, chance, or number in any foreign or pretended foreign lottery, or in any class, part or division thereof, or in any undertaking in the nature of a lottery ; or shall sell, procure, or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate of any foreign or pretended foreign lottery ; or shall receive any money for any such ticket, receipt, chance, or number, or in consideration of any money to be repaid in case any ticket or number in any foreign or pretended foreign lottery, or any class, part, or division thereof, shall prove fortunate ; and shall be convicted thereof in the courts at *Westminster*, or on the oath of one witness before two justices where the offence shall be committed, or the offender shall be found ; he shall forfeit 200 l. one third to the king, one third to the informer, and one third to the poor ; the same (in case of conviction before the justices) to be levied by distress by warrant of such justices ; and shall also be committed to the common gaol for a year, and from thence till the 200 l. be paid ; provided, that persons aggrieved may appeal to the next quarter sessions. s. 29, 30.

21. No person, other than the plaintiff and defendant, shall be incapacitated from being a witness, touching any offence against the laws for preventing excessive and deceitful gaming, by reason of having played, betted, or staked at any prohibited game. 18 G. 2. c. 34. s. 5.

How far an offender may be a witness.

Gaol and gaoler.

For breaking of gaol, see *Prison breaking*.

- I. Building and repairing of gaols.*
- II. Who shall have the keeping of gaols.*
- III. Gaoler shall receive criminals.*
- IV. How they shall be maintained.*
- V. Selling of strong liquors in gaols,*
- VI. How prisoners may be set on work.*
- VII. How they shall be restrained and kept.*
- VIII. How they shall be delivered.*
- IX. Of gaolers permitting escapes.*
- X. Concerning debtors.*
- XI. Concerning the prisons of the King's bench and Marshalsea.*

I. Building and repairing of gaols.

THE justices, or the greater number of them, within the limits of their commission, upon presentment of the grand jury at the assizes (or sessions, 12 G. 2. c. 29. s. 13.) of the insufficiency or inconveniency of the county gaol, may contract with any person for the building, finishing, or repairing the same. 11 & 12 W. c. 19. s. 1, 2. The expence thereof to be paid by the treasurer, out of the general county rate. 12 G. 2. s. 29.

But this shall not extend to gaols held by inheritance; nor to charge any persons in any town or liberty which have common gaols for felons, and commissioners of assize or gaol delivery, for any assessment to the making the common gaol for the shire. 11 & 12 W. c. 19. s. 4, 5.

II. Who shall have the keeping of gaols.

The gaol itself is the king's, but the keeping thereof is incident to the office of the sheriff, and inseparable from it; except such goods whereof any persons have the keeping by inheritance or succession. 14 Ed. 3. st. 1. c. 10. 19 H. 7. c. 10. 2 Inst. 589.

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Gaol and gaoler.

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And therefore the sheriffs shall put in such keepers for whom they will answer. 14 Ed. 3. st. 1. c. 10.

But by the 3 G. c. 15. s. 10. None shall buy the office of gaoler, on pain of 500 l. half to the king, and half to him that shall sue.

And a gaoler in fact, is as much punishable for a misdemeanor in his office, as if he were a rightful gaoler. 2 Haw. 134.

III. Gaoler shall receive criminals.

All felons shall be imprisoned in the common gaol, and not elsewhere. 5 H. 4. c. 10.

And if the gaoler refuses to receive a felon, or take any thing for receiving him, he shall be punished for the same by the justices of gaol delivery. 4 Ed. 3. c. 10. Dalt. c. 170.

But vagrants and other criminals, offenders, and persons charged with small offences, may for such offences, or for want of sureties, be committed either to the common gaol, or house of correction, as the justices in their judgment shall think proper. 6 G. c. 19.

IV. How they shall be maintained.

Lord Coke says, the gaoler cannot refuse the prisoner victuals, for he ought not to suffer him to die for want of sustenance. 1 Inst. 295.

But this is denied by others; and as there are several statutes which provide for the maintenance of prisoners, without supposing the gaoler any way obliged to it, it seemeth that this opinion is not maintainable. Bac. Abr. Gaol, gaoler. F.

For by the 14 El. c. 5. and 12 G. 2. c. 29. they are to be provided for by a sum to be paid out of the general county rate, by the high constables, to such sufficient persons dwelling nigh the gaols, as shall be appointed by the justices in open sessions, who shall be there ready to receive it.

V. Selling of strong liquors in gaols.

By the 24 G. 2. c. 40. No licence shall be granted for retailing *spirituous liquors* within any gaol or prison; and if the gaoler shall sell, lend, use, or give away, or suffer the same (except by way of medicine) he shall forfeit 100 l.

Gaol and gaoler.

half to the king, and half with full costs to him who shall sue. *f. 17.*

And any justice, on information on oath, that spirituous liquors are kept or disposed of in such gaol, may enter and search, or issue his warrant to search for, and seize, and stave, and destroy the same. *f. 18.*

And if any person shall endeavour to bring any spirituous liquors into such gaol, the gaoler or his servants may apprehend and carry him before a justice; and if by the oath of one witness or otherwise such person shall be convicted, he shall be committed to prison or to the house of correction, not exceeding three months, unless he shall immediately pay down such fine, not exceeding 20*l.* and not less than 10*l.* as the justice shall impose, to be paid half to the informer, and half to the poor of such gaol. *f. 19.*

And a copy of the three clauses above, shall be hung up in each gaol, on pain of the gaoler forfeiting 40*s.* to be levied by warrant of one justice, on conviction on the oath of one witness: And any justice may enter and demand a sight of such copy, and if not shewn to him, he shall immediately convict such gaoler: one half of the said penalty to be to the informer, and the other (or the whole if there be no informer) to the poor of such gaol. *f. 20.*

And by the 29 *G. 2. c. 12.* No person shall retail *ale*, *beer*, or other liquors, in any prison, without being licensed in like manner as alehouse-keepers.

VI. How prisoners may be set on work.

The justices in their general sessions, if they find it needful, may provide a stock of such materials as they find convenient for the setting poor prisoners on work, to be paid for by the treasurer out of the general county rate; and may pay and provide fit persons to oversee and set such prisoners on work; and make such orders for accounts concerning the premises, as shall be thought needful, and for punishment of neglects and other abuses, and for bestowing the profits arising by the labour of the prisoners for their relief. Provided that the sum to be so paid do not exceed the rate of 6*d.* a week for any one parish.

19 *C. 2. c. 4. f. 1.* 12 *G. 2. c. 29.*

VII. How

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VII. *How they shall be restrained and kept.*

The county gaol is the prison for malefactors ; but prisoners for debt, where escape lies against the sheriff for their escaping, may be kept in what place the sheriff pleases. *L. Raym. 136.*

By the 31 *C. 2. c. 2.* if any person shall be committed to any prison, for any criminal or supposed criminal offence, he shall not be removed from thence, unless it be by *habeas corpus* or some other legal writ ; or where he is removed from one prison or place to another, within the same county, in order to his trial or discharge ; or in case of sudden fire or infection, or other necessity : On pain that the person signing any warrant for such removal, and the person executing the same, shall forfeit for the first offence 100*l.* and for the second 200*l.* to the party grieved. *f. 9.*

But on emergent occasions, as in case of infectious diseases, the sheriff or gaoler, with the advice and consent of three or more justices (1 & 2.) may, if they shall find it needful, provide other safe places (with the owner's consent) for the removal of sick or other persons out of the usual gaols. 19 *C. 2. c. 4. f. 2.*

By the 22 & 23 *C. 2. c. 20.* The gaoler shall not put, keep, or lodge prisoners for debt and felons together in one room or chamber ; but they shall be put, kept, and lodged separate and apart from one another in distinct rooms ; on pain of forfeiting his office, and treble damages to the party grieved. *f. 13.*

Nevertheless it seemeth generally in all cases where a man is committed to prison, especially if it be for felony, or upon an execution, or but for a trespass or other offence, every gaoler ought to keep such prisoner in safe and close custody ; safe, that he cannot escape ; and close, without conference with others or intelligence of things abroad. *Dalt. c. 170.*

And therefore if the gaoler shall license his prisoner to go abroad for a time, and then to come again, or to go abroad with a keeper, tho' he come again, yet these are escapes. *Dalt. c. 170.*

And hereupon it is lawful for the gaoler to hamper a felon with irons to prevent his escape. 1 *H. H. 601. Dalt. c. 170.* and it is said, that a gaoler is no way punishable for keeping even a debtor in irons. 2 *Haw. 152.*

Gaol and gaoler.

But the learned editor of *Hale's History* observes, that this liberty even in the case of a felon (much more in the case of a prisoner for debt) can only be intended, where the officer has just reason to fear an escape ; as where the prisoner is unruly, or makes any attempt to that purpose ; but otherwise, notwithstanding the common practice of gaolers, it seems altogether unwarrantable, and contrary to the mildness and humanity of the laws of *England*, by which gaolers are forbidden to put their prisoners to any pain or torment. And lord *Coke*, 2 *Inst.* 381. is express, that by the common law it might not be done. 1 *H. H.* 601.

And if the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler by the common law : And this is the cause, that if a prisoner die in gaol, the coroner ought to sit upon him ; and if the death was owing to cruel and oppressive usage on the part of the gaoler or any officer of his, it will be deemed wilful murder in the person guilty of such duress. 3 *Inst.* 91. *Fost.* 321, 322.

But if a criminal, endeavouring to break the gaol, assault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71. 1 *H. H.* 496. For gaolers and their officers are under the same special protection that other ministers of justice are. And therefore if in the necessary discharge of their duty they meet with resistance, whether from prisoners in civil or criminal suits, or from others in behalf of such prisoners, they are not obliged to retreat as far as they can with safety, but may freely and without retreating repel force with force. And if the party so resisting happeneth to be killed, this on the part of the gaoler, or his officer, or any person coming in aid of him will be justifiable homicide. On the other hand, if the gaoler, or his officer, or any person coming in aid of him, should fall in the conflict, this will amount to wilful murder in all persons joining in such resistance. It is homicide committed in defiance of the justice of the kingdom. *Fost.* 321.

But so far as much as the gaol is intended, in most cases, for custody and not for punishment ; and confinement it self, especially in such dismal abodes as it is to be feared many of the gaols are, is sufficiently afflictive and disconsolate ; human nature will plead for those miserable objects, that their condition be rendered as tolerable as the case will admit of ; particularly with regard to cleanliness, which is the parent of health ; and wholesome air, which

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Fost. 74.

is life itself. A remarkable effect of want of care in this respect, Sir *Michael Foster* takes notice of, in the case of one Mr. *Clarke*, who was brought to his trial at the *Old Baily* sessions in *April 1750*. It being a case of great expectation, the court and all the passages to it were extremely crouded. The weather also was hotter than is usual at that time of the year. Many people who were in court, were sensibly affected with a very noisome smell. And it appeared soon afterwards, upon an inquiry ordered by the court of aldermen, that the whole prison of *Newgate*, and all the passages leading thence into the court, were in a very filthy condition, and had long been so. What made these circumstances to be at all attended to was, that within a week or ten days at most after the sessions, many people who were present at Mr. *Clarke's* trial, were seized with a fever of the malignant kind, and few who were seized recovered. The symptoms were much alike in all the patients; and in less than six weeks the distemper intirely ceased. At the time this disaster happened, there was no sickness in the gaol, more than is common in such places. Which circumstance, that distinguisheth this from most of the cases of the like kind which we have heard of, suggests a very proper caution, not to presume too far upon the health of the gaol, barely because the gaol fever is not among the prisoners. For without doubt, if the points of cleanliness and free air have been greatly neglected, the putrid *effluvia* which the prisoners bring with them in their cloaths or otherwise, especially where too many are brought into a crouded court together, may have fatal effects on people who are accustomed to breathe better air; though the poor wretches, who are in some measure habituated to the fumes of a prison, may not always be sensible of any great inconvenience from them. The persons of chief note who were in the court at this time, and died of the fever, were Sir *Samuel Pennant* lord mayor for that year, Sir *Thomas Abney* one of the justices of the common pleas, *Charles Clarke* esquire one of the barons of the exchequer, and Sir *Daniel Lambert* one of the aldermen of *London*. Of less note, a gentleman of the bar, two or three students, one of the under sheriffs, an officer of lord chief justice *Lee* who attended his lordship in court at that time, several of the jury on the *Middlesex* side, and about forty other persons whom business or curiosity had brought thither.

Fest. 74.

Goal and goaler.

VIII. How they shall be delivered.

By the 3 *H. 7. c. 3.* Those that have the custody of gaols, must certify the names of all prisoners, to the justices of gaol delivery, in order to their trial or discharge; on pain of 5*l.*

And if a gaoler detains a prisoner in gaol after his acquittal, unless it be for his fees (not for meat, drink, or lodging) this is an unlawful imprisonment. 2 *Inst. 53.*

And a gaoler must not disobey a writ of *habeas corpus*, for want of his fees; but the court will not turn the prisoner over till the gaoler be paid all his fees. 2 *Haw. 151.*

IX. Of gaolers permitting escapes.

If the gaoler voluntarily suffer a prisoner to escape, he shall be punished in the same manner as the prisoner ought to have been who escaped; and if he negligently permit him to escape, he shall be punished by fine and imprisonment. And the sheriff shall answer for him. 2 *Haw. 134, 5, 6.*

But the principal gaoler is only fineable for the voluntary escape of a felon suffered by his deputy; for no one shall suffer capitally for any crime, but he who is actually guilty of it. 2 *Haw. 135.*

But for a negligent escape suffered by his bailiff, the sheriff is as much liable to answer, as if he had actually suffered it himself; and the court may charge either the sheriff or bailiff for it: And if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him. 2 *Haw. 135.*

X. Concerning debtors.

Arresting and
carrying to gaol.

1. By the 32 *G. 2. c. 28.* No sheriff, bailiff, or other officer, shall carry any person by him arrested or being in his custody by virtue of any writ or other process, to any tavern, alehouse, or other publick victualling or drinking house, or to the private house of any such officer or of any tenant or relation of his without his free consent; nor charge him for any liquor, victuals, or other thing whatsoever, but what he shall call for of his own accord; nor cause or procure him to call for any such, but what he shall call for voluntarily; nor demand, directly or indirectly,

directly, any other or greater fee than is by law allowed; nor take any gratuity for keeping him out of gaol; nor carry him to gaol within 24 hours from the time of the arrest, unless such person arrested shall refuse to be carried to some safe and convenient dwelling house of his own appointment within some city or market town (if there arrested), otherwise within 3 miles from the place of arrest, so as such dwelling house be not the house of the person arrested, and be within the respective division or liberty.

f. 1.

And no sheriff, bailiff, or other officer, shall take more for one or more nights lodging, or for a day's diet, or other expences of any person under arrest, than shall be allowed by order of sessions: Which sessions shall make order therein, and vary the same from time to time as they shall see occasion; and shall cause a copy of every such order, and of every variation or alteration thereof, signed by the clerk of the peace, to be put and kept up in some conspicuous place in the sessions house or other proper place, that the same may be there seen and examined.

f. 2.

And every sheriff, and other person intrusted with the execution of process, shall deliver a printed copy of the several clauses in this act relating to bailiffs and other persons to be employed under them, to every such bailiff and other person; and shall also make it part of the condition of the bond to be given by such bailiff or other person, that he will shew and deliver a copy of the said clauses to every person he shall arrest and go with to any publick or other house where any liquor shall be sold, and that he will permit every person so arrested or any friend of his, to read over the same clauses before any liquor, meat, or victuals shall be called for or brought to such person: And if any bailiff shall offend in the premises; he shall, besides the breach of the condition of the bond, be deemed guilty of a misdemeanor in the execution of the process, and punishable as such by virtue of this act. *f. 3.*

2. And the sheriffs and gaolers shall suffer any prisoner for debt, at his will and pleasure to send for or to have brought unto him at seasonable times in the day, any beer, ale, victuals, or other necessary food, from what place he shall think fit, or can have the same; and also to have and use such bedding, linen, and other necessities, as he shall have occasion for and think fit, or shall be supplied with, without purloining or detaining the same, or

Gaoler to suffer
the prisoner to
send for necessaries.

Justices to establish tables of fees, and rules and orders for the regulation of gaols.

requiring him to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him in relation thereunto. *f. 4.*

3. The two lords chief justices and lord chief baron, or two of them, together with the mayor and two aldermen of London, or with three aldermen without the mayor, in respect of the prisons within the said city; and the said lords chief justices and chief baron, or two of them, together with three justices of the peace of Middlesex and Surry respectively, for the prisons within the said counties; and elsewhere, the justices in sessions, — shall establish tables of the rates and fees to be taken by gaolers within their respective jurisdiction, and vary the same from time to time as they shall see occasion. The same to be signed respectively by the said judges, mayor, aldermen, and justices within London, Middlesex, and Surry; and elsewhere, to be signed by 3 or more justices in sessions, and afterwards reviewed and confirmed or moderated by the judges of assize (or justices of great sessions in Wales and Cheshire) at the next assizes to be held after making or varying the same as aforesaid; the same to be afterwards signed by the said judges of assize and three justices of the peace of such division or place respectively. *f. 5.*

And proper rules and orders, for the better government of the respective gaols and prisoners therein, shall be made, and altered from time to time as there shall be occasion, by the courts of Westminster hall for the several prisons belonging to the said courts: And by the said lords chief justices and chief baron or two of them, together with the mayor of London and two aldermen, or with 3 aldermen without the mayor, for the prisons within the said city: And by the said lords chief justices and chief baron or two of them, together with 3 justices of the peace, for the prisons within Middlesex and Surry; and elsewhere, by three or more justices in sessions, for the prisons within their respective districts; the same to be afterwards reviewed, and altered if thought necessary, by the judges of assize at the next assizes after making or altering the same: And after every making or altering as aforesaid, the same shall be signed by the said several persons authorized to make, review, or alter the same. *f. 6.*

And duplicates of every such table of fees and of orders which shall be made for the prisons belonging to the courts of Westminster hall shall be inrolled in such court: And for any other prisons, shall be transmitted to the clerk of

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the peace, to be inrolled by him, without fee; and every such clerk of the peace shall cause another copy thereof to be hung up in the court where the assizes or quarter sessions shall be held, there to remain and be inspected; and shall cause another copy thereof to be transmitted to the gaoler; and such gaoler shall forthwith cause the same to be hung up in some open place and in a conspicuous manner in his gaol; and to be there kept up, so as that the prisoners may have free resort thereto, at seasonable times in the day, without paying any thing for the same.

id.

And the courts of Westminster hall shall, in every *Michaelmas* term, inquire whether such tables of fees and such rules or orders are there hung in the several prisons to them belonging, and duly complied with: And the judges of assize shall make like inquiry, and shall supply and redress whatever they shall find neglected or transgressed relating thereunto; and shall expressly give in charge to the grand jury, to make inquiries thereof. *f. 7, 8.*

And no gaoler shall take, directly or indirectly, of any prisoner for debt, damages, costs, or contempt, any other fee for his commitment, or coming into gaol, chamber rent there, release or discharge, than shall be allowed in the said table of fees: And every sheriff, gaoler, or other officer, who shall in any wise offend against this act, shall for every such offence (over and above such other penalties or punishments as he shall be liable to by the laws now in force) forfeit to the party grieved 50*l.* with treble costs. *f. 12.*

4. The courts at Westminster, justices of assize (and great sessions), justices of the peace, and commissioners for charitable uses, shall from time to time inquire concerning gifts and bequests to poor prisoners; who may send for papers and witnesses, and examine persons upon oath, and order and settle the payment thereof in such easy and expeditious way as they shall think proper. *f. 9.*

Charities to gaols.

And a table of such benefactions, after every such settling thereof, shall be transmitted to the clerk of the peace, to be registered by him without fee; and another table to the gaoler, to be hung and kept up by him in some conspicuous place in his gaol, where the prisoners may have easy resort thereto without fee. *f. 10.*

5. On the petition in term time of any person being or having been under arrest, complaining of any exaction or abuse by the gaoler or other officer, unto any of the courts of record at Westminster from whence the process issued;

Redress of grievances.

issued; or, in vacation time, to any of the judges of such court, or to the judges of assize or great sessions, or judges of any other court of record from whence such process issued; they shall hear and determine the same in a summary way, and make such order thereupon for redressing the abuses, and for punishing the offender, and for making reparation to the party injured, as they shall think just, together with full costs of the complaint; the same to be enforced by attachment, or in any other manner as other orders of the said courts or judges may be enforced.

f. II.

How prisoners
may be discharged
on delivering
up their effects.

6. If any person shall be charged in execution, for any sum not exceeding 100*l.* and shall be minded to deliver up to his creditors who shall so charge him in execution, all his estate and effects towards the satisfaction of the debt wherewith he shall so stand charged; it shall be lawful for such prisoner, before the end of the first term which shall be next after his being so charged in execution, to exhibit a petition to any court of law from whence the process issued, or to the court into which he shall be removed by habeas corpus, or shall be charged in custody, and shall remain in the prison thereof; certifying the cause of his imprisonment:

And setting forth therein, not only a just and true account of all the real and personal estate which he or any person in trust for him is intitled to at the time of his petitioning, and of all incumbrances and charges affecting the same; but also a just and true account of all the real and personal estate which he, or any person in trust for him or for his use, was interested in or intitled to at the time of his imprisonment, either in possession, remainder or expectancy, to the best of his belief, and so far as his knowledge extends; and likewise a just and true account of all securities wherein any part of his estate consisteth, and of all deeds, evidences, writings, books, bonds, notes, and papers concerning the same or relating thereto; and the names and places of abode of the witnesses to all securities, bonds, and notes, and where they are to be met with, so far as his knowledge extends:

And before such petition shall be received by any such court, he shall cause to be given or left unto or for all the creditors at whose suit he shall stand charged in execution as aforesaid, their executors or administrators, and at their usual places of abode (or to their attorney or agent last employed in the cause, if such creditors, or their executors or administrators, cannot be met with, and not otherwise) 14 days at least before such petition shall be presented and received,

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received, a notice in writing, signed with his name or mark, importing, that he doth intend to petition the court from whence the process issued upon which he stands charged in execution, or into the prison to which he shall have been removed by habeas corpus, or shall stand charged in execution on any judgment recovered on any bill or declaration filed or delivered in any such court; and also setting forth in such notice, a true copy of the account or schedule of his estate which he intends to deliver into court (except the necessary wearing apparel and bedding of him and his family, and the tools or instruments of his trade or calling, not exceeding the value of 10l. in the whole):

And an affidavit of the due service of such notice shall be delivered with the petition, and openly read in the court:

And if the court shall be satisfied with the regularity of such notice, the petition shall be received; and the court shall thereupon, by order or rule of the said court, cause the prisoner so petitioning to be brought up, and the said creditors or their executors or administrators to be summoned to appear personally or by their attorney in the said court:

And on their appearance, or if they shall not appear, then on affidavit of the due service of the said order on them, or on their attorney if they cannot be met with; such court shall in a summary way, examine into the matter of the petition, and tender to the prisoner the oath following;

I A. B. do swear in the presence of almighty God, that the account by me set forth in my petition presented to this honourable court, doth contain a full and true account of the real and personal estate, debts, credits, and effects whatsoever, which I, or any in trust for me, at the time of my first imprisonment in this action, or at any time since, had, or was in any respect intitled to, in possession, reversion, or remainder (except the wearing apparel and bedding of or for me and my family, and the tools or instruments of my trade or calling, not exceeding 10l. in value in the whole): and also an account how much of my real and personal estate, debts, credits, or effects, hath since been disposed of, released or discharged, and how, to whom, and on what consideration, and for what purpose, and how much thereof, I or any person or persons in trust for me, have, or at the time of my presenting my said petition to this honourable court, had, or which I am or was,

or

Gaol and gaoler.

on any person in trust for me, or for my use, is any ways interested in, or intitled to, in possession, reversion, remainder, or expectancy; and also a true account of all deeds, writings, books, papers, securities, bonds, and notes, relating thereto, and where the same respectively now are, to the best of my knowledge and belief, and what charges are now affecting the real estate I am now seised of, or intitled to [if such prisoner shall be then seised of any real estate]; and that I have not, at any time before or since my imprisonment, directly or indirectly, sold, leased, assigned, mortgaged, pawned, or otherwise disposed of, or made over in trust for myself, or otherwise, than is mentioned in such account, any part of my messuages, lands, tenements, estates, goods, stock, money, debts, or other real or personal estate, whereby to have or accept any benefit, advantage, or profit, to my self or my family, or with any view, design, or intent, to deceive, injure, or defraud, any of my creditors to whom I am indebted: So help me God.

And thereupon, the court may order the messuages, lands, tenements, goods, and effects contained in the account, or as much of them as shall be sufficient to satisfy the said debts and the fees due to the gaoler, to be (by a short indorsement on the petition, and to be signed by the prisoner) assigned and conveyed to the said creditors, their heirs, executors, administrators, and assigns, for the benefit of them who shall have so charged such prisoner in execution (subject nevertheless to all prior incumbrances affecting the same):

And the estate, interest, or property of all messuages, lands, goods, debts, estates, and effects which shall belong to such prisoner, shall by such assignment be vested in the persons to whom the assignment shall be made; and they may take possession, and sue for the recovery thereof, in like manner as assignees of commissioners of bankrupts:

And on such assignment and conveyance being executed by such prisoner, he shall be discharged out of custody by rule or order of such court; which order being produced to, and a copy thereof left with the sheriff or gaoler, he shall forthwith discharge him, without taking any fee, or detaining him in respect of chamber rent, lodging, or otherwise:

And the person to whom the estate shall be assigned, shall with all convenient speed sell and dispose thereof, and divide the net produce amongst the creditors who shall have charged such prisoner in execution before the

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time of presenting the petition, in proportion to their respective debts.

But if any person at whose suit such prisoner stood charged in execution, shall not be satisfied with such prisoner's oath, and shall either personally, or by his attorney (if he cannot personally attend, and proof shall be made thereof to the satisfaction of such court) desire further time to inform himself of the matters contained therein; such court may remand the prisoner, and direct him, and the person dissatisfied, to appear either in person or by his attorney, on some other day at farthest within the first week of the term next following the time of such examination; but sooner if such court shall think fit.

And all objections which shall be made as to the insufficiency in point of form against the schedule, shall be only made the first time such prisoner shall be brought up.

And if at such second day, the creditor dissatisfied shall not appear, or shall be unable to discover any estate or effects of the prisoner omitted in the account set forth in his petition; in such case, the court shall order the prisoner to be discharged, on his executing such assignment and conveyance as aforesaid; unless such creditor shall insist upon his being detained, and shall agree by writing signed by him (or by his attorney, in case such creditor shall be out of *England*) to pay weekly a sum not exceeding 2 s. 4 d. as such court shall think fit, to the said prisoner, to be paid weekly every Monday; and in such case, the prisoner shall be remanded: But if any failure shall be made in the payment thereof, such prisoner, upon application in term time to such court, or in vacation time to any judge of such court, may by order of such court or judge be discharged, on his executing such assignment as aforesaid; proof being made on oath, of the non-payment, for any week, of such sum.

And if any prisoner shall refuse to take the said oath, or shall be detected before such court or judge of falsity therein, or shall refuse to execute such assignment; he shall presently be remanded. *f. 13.*

Provided that where more creditors than one shall desire to have such prisoner detained; every of such creditors shall only respectively pay such sum, not exceeding 1 s. 6 d. a week, as the court shall order. *f. 14.*

Gaol and gaoler.

But where any prisoner shall be charged in execution in any county gaol, or in any other prison above 20 miles from Westminster hall or from the court out of which the execution issued; then, on the like petition as aforesaid, to the court from whence such execution issued, or in the prison of which such prisoner is and stands charged in execution; and on affidavit in like manner as aforesaid being made and left with such petition; such court, on being satisfied with the truth of such affidavit, shall make a rule to cause the prisoner to be brought to the next assizes (or great sessions in Wales and Cheshire) to be holden for the place where he shall be imprisoned; and the expence of bringing him not exceeding 1s. a mile, shall be paid to the gaoler out of the prisoner's estate if the same shall be sufficient to pay such expence; and if not, then to be paid by the treasurer of the county or place in which such prisoner shall be imprisoned, as shall be allowed by the judge; and the creditors, or their executors or administrators, shall by order of the court from whence the process issued, be summoned to appear at the said assizes, if they can be met with; if not, then the attorney last employed for such creditors; and a copy of such order shall be served on every such creditor, or his executors or administrators, or left at his dwelling house or usual place of abode, or with his attorney last employed, 14 days at least before such assizes. And upon affidavit of such service thereof being laid before the judge of assize, he shall, on being satisfied with the truth of such affidavit, appoint a time for hearing the matter of the petition, on some certain day and time, on the crown side of such court, during such assizes. And on the appearance of the said creditors; or, in default of their appearance, either in person or by attorney, then on proof of their being duly served with the notice, and of a copy of the schedule being comprised in such notice, and of the rule of such court for their appearance being duly served; the judge shall in a summary way examine into the matter of the petition, and administer the oath to the prisoner, and make such order in the premises as to him shall seem meet, and proceed in manner as aforesaid concerning the prisoner's discharge, and give the same judgment, relief, and directions relating thereunto, as any court out of which the process shall issue is herein before directed to do: And the order of the said judge shall stand good, and be entred upon record in such assizes; and a copy thereof (signed by

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by the judge) shall be transmitted to the court from whence the execution issued, to be there also entred upon record. *f. 15.*

7. By the said act of 32 G. 2. c. 28. If any prisoner ^{How compellable to deliver up.} who shall be charged in execution, for any debt or damages not exceeding 100 l. besides costs of suit, shall not within three months next after his commitment make satisfaction to his creditors who charged him in execution; any such creditor or creditors may require him, on giving 20 days notice to him in writing that they design to compel him to give in to the court from which the process issued, or into the court in the prison whereof he shall be removed by habeas corpus, or shall remain or be charged in execution, within the first seven days of the term next after the expiration of the said 20 days, in respect to any prisoner charged in any prison belonging to the courts at Westminster; and at the second court which shall be held by any such other court of record after the expiration of the said 20 days, in respect to any prisoner charged in any prison belonging to such other court; and where such prisoner shall be charged in execution in any county gaol or other prison above 20 miles distant from Westminster hall or from the court out of which the process issued, then to give in upon oath at the assizes or great sessions respectively; and on the crown side thereof, which shall be held for such place next after the expiration of such 20 days from the time of giving notice as aforesaid, a true account in writing, to be signed by him, of all his real and personal estate, and of all incumbrances affecting the same, to the best of his knowledge and belief, in order that the estate and effects of such prisoner may be devided out of him, and ordered by the court to be assigned and conveyed for the benefit of such his creditors. And every such creditor, requiring such prisoner to be brought up as aforesaid, shall also give 20 days like notice in writing of his intention to require such prisoner to be brought up, to every other creditor at whose suit such prisoner shall be detained or charged in custody in such gaol, if they can be found; and if not, then to the several attornies last employed: and shall also give a like notice in writing to the sheriff or gaoler of such his intention to have such prisoner brought up, and to require such sheriff or gaoler to bring him up accordingly, 20 days at least before the time appointed for him to be brought up. And thereupon such sheriff or gaoler shall, as the costs of such creditor, cause such prisoner to be brought

Gaol and gaoler.

brought to such court as by the notice is required, together with a copy of the cause or causes of his detainer: and if such sheriff or gaoler, on such notice given to him as aforesaid, and tender made to him by such creditor of reasonable charges not exceeding 1 s. a mile, shall neglect or refuse to bring him up as aforesaid; he shall forfeit 20 l. to the party grieved, with treble costs. And the prisoner so brought up, shall, on proof of such notices being given as aforesaid, deliver in there in open court, upon oath, a full true and just account, disclosure, and discovery in writing, of the whole of his real and personal estate, and of all books, papers, writings, and securities relating thereto, and also of all incumbrances then affecting the same, and the respective times when made, to the best of his knowledge and belief (except the necessary wearing apparel and bedding of him and his family, and the necessary tools or instruments of his trade or calling, not exceeding the value of 10 l. in the whole): which account shall be subscribed by him. And on delivering in of such account, the estate and effects of such prisoner shall be assigned and conveyed by him, by a short indorsement on the back of the said account, to such persons as the court shall direct, in trust and for the benefit of the creditors who shall have required such prisoner to be brought up, and of such other creditors (if any there be) at whose suit such prisoner shall be charged in custody or in execution in any such gaol, and who shall, by any memorandum or writing signed by them before such assignment made, consent to such prisoner's being discharged, and to accept a proportionable dividend of such prisoner's effects; and if there be no other such creditor, or being such, if such creditors shall not agree in writing to discharge such prisoner and to accept such dividend, then in trust for the creditors only who shall require such prisoner to be brought up. And by such assignment and conveyance, all the prisoner's estate and effects shall be vested in the creditors to whom the same shall be assigned in trust as aforesaid. And upon such discovery, assignment, and conveyance being made, the court shall discharge the prisoner in the actions and charges of every such creditor, who required the prisoner to be brought up, or who signed such consent as aforesaid; on paying 2 s. 6 d. discharge fee, and no more, to the officers of the court. And no stamp shall be necessary on such assignment or on any rule or order for such discharge.—But all the future effects of such prisoner (except the necessary wearing apparel of him
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and his family, and the necessary tools or instruments of his trade or calling) shall be liable to satisfy his debts, if the same shall not be fully paid from his estate so assigned as aforesaid; and no advantage in any suit shall be taken by him, for that the cause of action did not accrue within six years next before the commencement of such suit, unless he was intitled to take such advantage before he stood charged in custody by virtue of the original suit or action. —And if he shall neglect or refuse to deliver in and subscribe such account as aforesaid, within the time herein before appointed, or within 60 days then next following, without making appear some just excuse to be allowed of by the court; or shall refuse to assign or convey his estate and effects according to the order of such court; he shall, on conviction upon indictment, be transported for 7 years: And if he shall deliver in a false account, or designedly conceal and not insert in the account any books, papers, securities, or writings relating to his estate and effects, with intent to defraud his creditors, and shall be thereof convicted on indictment, he shall suffer as for wilful perjury. *f. 16, 17.*

8. By the said act of 32 G. 2. c. 28. the assignees may compound with any debtors or accountants to such prisoner, and take such reasonable part of any debt due, as can upon such composition be gotten; and also may submit matters to arbitration, relating to the prisoner's estate and effects, which shall be binding to all the parties. *f. 21.* Assignees may compound.

And where mutual credit hath been given between the prisoner and any other, before the delivery of the schedule; the assignees may state and allow the account between them, and receive the balance. *f. 23.*

9. And it shall be lawful for the respective courts at Westminster from whence the process issued; or where the prisoner shall have been charged in execution by process issued out of any other court, it shall be lawful for the judges of the courts of king's bench, common pleas, and exchequer, or any of them, from time to time, on the petition of any creditor who had charged such prisoner in execution, or of such prisoner, complaining of any insufficiency, fraud, mismanagement, or other misbehaviour of any assignee, to order the parties to attend thereon; and upon hearing, they shall make such order, either for the removal of such assignee and appointing a new one, or for the just management of the effects, as to them shall seem meet. *f. 22.* Misbehaviour in the assignees.

Gaoler to have only his dividend.

Prisoner discharged shall not be again arrested.

But his effects shall be liable.

Persons guilty of perjury.

Persons not relievable having taken the benefit of any former act.

10. If the effects assigned shall not satisfy the whole debts and the gaoler's fees; the gaoler shall receive only a proportionable dividend with the other creditors. *f.* 19.

11. A prisoner discharged shall never after be arrested or liable to action for the same debt, unless convicted of perjury. *f.* 20.

12. But nevertheless, the judgment against him shall continue in force, and execution thereon may be had at any time against his lands and goods, other than his necessary wearing apparel and bedding for himself and family, and the necessary tools of his trade or occupation not exceeding 10*l.* value in the whole. *f.* 20.

13. If any person who shall take any oath as by this act required to be taken, shall upon any indictment for perjury be convicted by confession or verdict; he shall suffer as for wilful perjury; and shall also be liable to be taken on any process de novo, and shall never after have the benefit of this act. *f.* 18.

14. No person who shall have taken the benefit of any act for the relief of insolvent debtors, shall have any benefit under this act; nor shall be deemed within the meaning of it, so as to gain any discharge, unless compelled by any creditor to deliver up his estate and effects. *f.* 24.

XI. Concerning the prisons of the king's bench and marshalsea.

The justices in *Easter* sessions shall set down what sums shall be sent out of every county or place corporate, for the relief of the poor prisoners of the *king's bench* and *marshalsea*, so as there be sent out of every county yearly 20*s.* at the least to each of the said prisons; to be paid by the high constables out of the general county rate, to two such treasurers or one of them, as by the more part of the justices of the county shall be elected to be treasurers: which treasurers, on the first day of *Trinity* term yearly, shall pay over the same to the lord chief justice of *England*, and knight marshal, or to whom they shall appoint, taking their acquittance for the same, or in default of the chief justice, to the next most ancient justice of the *king's bench*, equally to be divided between the prisoners of the *king's bench* and *marshalsea* prisons. 43 *El. c.* 2. *f.* 12, 13, 14. 11 *G. 2. c.* 29. *f.* 1. 12 *G. 2. c.* 29.

And if the treasurer shall neglect or refuse, the king's bench may make a rule on him, requiring him to pay the same; and obedience to such rule may be enforced as other rules of the said court, at the costs and charges of the treasurer. 11 G. 2. c. 20. f. 2. 4.

And that the treasurer may be the better amenable to the said court, he shall within 30 days after his election or appointment, under the like penalty, transmit his name and place of abode to the clerk of the crown in the king's bench, to be entred by him; for which entry no fee shall be paid. f. 3.

Gauger. See Excise.

Gin. See Excise.

Glass. See Excise.

Good behaviour. See Surety.

Grand larceny. See Larceny.

Greyhound. See Game.

Gunpowder.

1. BY an act made in the 16 C. 1. c. 21. (to wit, in 1640, being the last statute of force in that king's reign) All subjects may make and sell gunpowder, and bring into the kingdom salt petre, brimstone, or any other material for the making of it.

And by a statute made in the first year of the reign of king James the second (which is also somewhat remarkable), it is enacted, that if any person shall obtain a grant for the sole making or importing of gunpowder, he shall incur a præmunire. 1 J. 2. c. 8. f. 3.

2. It seemeth, that erecting powder mills, or keeping powder magazines, near a town, is a nuisance; for which an indictment or information will lie. For in the case of *K. and Williams, E. 12 W.* there was an indictment against *Roger Williams*, for keeping 400 barrels of powder near the town of *Bradford*, and he was convicted accordingly. And in *K. and Taylor, T. 15 G. 2.* the court granted an information against the defendant as for a nuisance, on affidavits of his keeping great quantities of gunpowder near *Malden* in *Surry*, to the indangering the church and houses where he lived. *Str. 1169.* (Or rather, it should have been

been expressed, to the indangering the lives of his majesty's subjects.)

What quantities
a man shall keep.

3. By the 11 G. 3. c. 35. (which reduces into one, and repeals all former acts relating to the keeping and carriage of gunpowder) no person, being a dealer in gunpowder, shall have or keep at any one time more than 200lb of gunpowder, and not being such dealer, more than 50lb, in any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other building or place, occupied by the same person (all buildings and places adjoining to each other, and occupied together, being to be deemed one house or place within this act), or on any river or other water, except in carriages loading or unloading, or passing on the land, or in ships, boats, or vessels loading or unloading, or passing on any river or other water, or detained there by the tide or bad weather, within the following limits; that is to say, within the cities of *London* or *Westminster* or 3 miles thereof; or within any city, borough, or market town, or one mile thereof; or within two miles of any of the king's palaces; or one mile of any of the king's gunpowder magazines; or half a mile of any parish church; or in any other part of Great Britain (except in places where it shall be lawful to keep unlimited quantities of gunpowder by force of the provisions herein after contained): on pain of forfeiting all the gunpowder in specie beyond the quantity hereby allowed to be kept, and the barrels in which such gunpowder shall be, and also 1s. for every pound of gunpowder beyond such allowed quantity. *f. 1.*

Provision for the
safe carriage of
gunpowder.

4. And no person shall have or convey, at any one time, more than 2000lb of gunpowder in any waggon, cart, or other carriage, by land; or more than 5000lb in any barge, boat, or other vessel, by water (except in vessels with gunpowder on board, imported from or to be exported to any place beyond sea): And all gunpowder conveyed on land or water (except in vessels for importation or exportation as aforesaid) shall be in barrels close joined and hooped, without any iron about them, and so secured that no part of the gunpowder be scattered in the passage; and each barrel shall contain no more than 100lb; and, when conveyed by land, shall be intirely inclosed in a leather bag, or a bag commonly called a salt petre bag; and every carriage or vessel (except such vessel as aforesaid), in which gunpowder shall be conveyed by land or water, shall have a compleat covering of wood, painted cloth, tarpaulin, or wadmill tilts, over all that part of the carriage

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riage or vessel in which the gunpowder barrels shall be placed. And all gunpowder carried contrary to this act, and the barrels in which the same shall be, may be seized by any person; who shall have the same authority to remove such gunpowder and barrels, and to use for that purpose (for 24 hours after seizure) the carriage or vessel in which such gunpowder shall be seized, and the tackling, beasts, and accoutrements belonging thereto, on the terms of paying a recompence for the use thereof, and to detain such gunpowder and barrels, as is herein after given to persons searching by warrant of a justice: and such seizure shall be for his own use, on conviction of the offender.

f. 2.

5. And one justice, on demand made by any person, ^{Power to search and seize.} and reasonable cause assigned upon oath, may issue his warrant to search in the day time any houses, storehouses, warehouses, shops, cellars, yards, wharfs, or other places, or any carriages, ships, boats, or other vessels, in which such gunpowder is suspected to be kept or carried. And all gunpowder found upon such search, and also the barrels, shall be immediately seized by the searcher or searchers; who shall, with all convenient speed after seizure, remove such gunpowder and barrels to such proper places, as they in conformity to the restrictions of this act shall think most convenient; and in case of such gunpowder seized in any carriage or vessel, may use for the purpose of removal, during the space of 24 hours after seizure, such carriage or vessel, with the tackling, beasts, and accoutrements belonging thereto, paying afterwards to the owner thereof a sufficient recompence for the use thereof to be settled by the justices before whom the complaint shall be heard, after seizure, and in case of non-payment immediately after settlement by the justices to be recovered by distress by warrant of such justices; and may detain such gunpowder and barrels till it shall be adjudged whether the same shall be forfeited; and shall not be liable to any suit for such detainer, or for any loss of, or damage which may happen to the said gunpowder or barrels, other than by the wilful acts or neglect of them or of the persons with whom they shall intrust the keeping thereof.

f. 3.

6. Out of the limits above described, the justices in ^{Justices in Sessions may licence powder mills.} sessions may grant licences for erecting or making mills, magazines, or storehouses, for making or keeping unlimited quantities of gunpowder; the person applying for the same having first given 14 days notice in writing of his intention

Gunpowder.

intention to make such application to an overseer or churchwarden of the parish or place in which it is proposed to erect or make any such new mill, magazine, or storehouse, or of an adjoining parish if the place shall be extraparochial, who shall cause such notice to be publickly read on the Sunday next ensuing, in the parish church after divine service. *f. 4.*

Provided, that no person shall be liable to prosecution for keeping unlimited quantities of gunpowder without such licence of the justices, in any magazine or storehouse already built or used for that purpose, in any place not being within the limits aforesaid, until the expiration of six calendar months after an adjudication by the justices in sessions that the same is dangerous: Which adjudication they shall not have power to make, unless on complaint made to them by some householder of the parish or place in which the magazine or storehouse shall be, and on oath of the witnesses produced, after summons of the owner to answer the complaint. *f. 5.*

And provided, that no person shall be liable to any prosecution for keeping unlimited quantities of gunpowder without such licence of the justices, in any magazine or storehouse erected by appointment of the justices under any of the former acts. *Id.*

Restrictions on
the river Thames.

7. No commander of any vessel in the river Thames outward bound shall receive on board more than 25 lb of gunpowder (except for the king's service), before the arrival of such vessel over against Blackwall; and the commander of every vessel coming into the Thames shall (except in case of gunpowder for the king's service) put on shore in proper places all the gunpowder on board above 25 lb, before the arrival of such vessel at Blackwall, or within 24 hours (if the weather shall permit) after coming to anchor or to the place of unloading there, and shall not afterwards have on board more than 25 lb (except for the king's service); on pain of forfeiting all the gunpowder above 25 lb, and the barrels in which such gunpowder shall be, and also 1 s. for every pound above 25. *f. 6.*

And the corporation of Trinity house shall appoint searchers; who shall have like power as persons authorized to search by warrant of a justice. *f. 7.*

Penalties how
recoverable.

8. All penalties on this act shall be recoverable before two justices, on the oath of one witness or confession, and shall go to the informer prosecuting for the same; and where the penalty is pecuniary, the same shall be levied by distress; and for want of sufficient distress, the offender

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der to be committed to the house of correction to be kept to hard labour not exceeding three months nor less than one. *f. 8.*

Prosecution to be commenced within 14 days after seizure of the gunpowder, or commission of the offence where there is no seizure. *f. 9.*

9. Provided always, that nothing herein shall extend to any storehouse, mill, or magazine belonging to his majesty; or to hinder the trial of gunpowder by the king's officers; or to any mill belonging to private persons already built and used for making gunpowder, or to any storehouses, magazines, or other offices, near to or adjoining to such mills; or to the carriage of gunpowder from the king's magazines by order of the board of ordnance, or with forces on their march. *f. 11.* Exceptions,

Guns. See Game.

Habeas Corpus. See Bail.

Hackney coaches and chairs.

For the duty on coaches, see title Excise.

1. **T**HE king may appoint persons not exceeding Commissioners five, to be commissioners for regulating hackney coaches within the bills of mortality. 9 *An. c. 23. f. 1.*

2. Which commissioners shall under hand and seal Licensing license hackney coaches within the cities of London and Westminster and suburbs thereof, and other places within the bills of mortality, not exceeding 1000; and on every licence shall be reserved 5 s. a week, to be paid monthly. 9 *An. c. 23. f. 2.* 11 *G. 3. c. 24, 28.*

And they shall also license hackney chairs within the said liberties, not exceeding 400; reserving a rent of 10 s. a year, to be paid quarterly. 9 *An. c. 23. f. 3.* 10 *An. c. 19. f. 158.* 12 *G. c. 12. f. 15.*

3. Every coach and chair shall have a distinct mark on Mark each side; and if any shall alter such mark, he shall forfeit

Hackney coaches and chairs.

Size of the
horses.

Penalty of dri-
ving without
licence.

Limitation of
distance.

Drivers to have
check strings.

Rates.

feit 5l. half to the informer, and half to the king. 9 *An. c. 23. f. 4.*

4. No horse to be used with any hackney coach, shall be under 14 hands high. 9 *An. c. 23. f. 4.*

5. No person shall drive or let to hire any hackney coach without licence; on pain of 5l. nor shall carry any person for hire in a hackney chair, without licence; on pain of 40s. in like manner. 9 *An. c. 23. f. 4.*

And by the 1 *G. 2. c. 57.* No unlicensed person shall ply with any coach or hearse, or shall let to hire any mourning coach, within the liberties aforesaid, on pain of 5l. as for driving unlicensed. *f. 3.*

And if any person shall drive a mourning coach to a funeral, not having a number on it, or except it be a coach attending the master or some of his family; on information given to the commissioners, they may summon the driver, and unless he prove an order from the master to attend at the funeral, the driver or the undertaker shall forfeit 5l. *f. 4.*

6. Every licensed coachman, plying for hire, shall be obliged and compellable, on every day of the week, at seasonable times, to go any where within the distance of ten miles from the city of *London* or *Westminster*. 7 *G. 3. c. 44. f. 12.*

7. And the commissioners shall order the several persons who take out licences for hackney coaches, that they provide cheque strings or wire, to be placed in such convenient part of every such coach as to the said commissioners shall seem meet: and every hackney coachman plying for hire without such cheque string or wire shall forfeit 5s. to be recovered as other penalties by any law relating to hackney coaches. 11 *G. 3. c. 28.*

8. And the coachman shall not take above the rate of 12s. 6d. a day, 7 *G. 3. c. 44. f. 17.* reckoning 12 hours to the day; and by the hour, not above 18d. for the first hour; and 12d. for every hour after: And no person shall pay from any of the inns of court or thereabouts to any part of *St. James's* or the city of *Westminster* (except beyond *Tuttle-street*) above 12d. and the same prices from the same places to the inns of court or thereabouts; and from the inns of court or thereabouts, to the *Royal Exchange* 12d. and if to the *Tower*, or *Bishopgate-street*, or *Aldgate*, or thereabouts 18d. and so from the said places to the said inns of court as aforesaid: and the like rates from and to any place, at the like distance, within the places beforementioned. 9 *An. c. 23. f. 6.*

And

And no person shall be obliged to pay above 12d. for a coach for any distance (not above specified) not exceeding one mile and four furlongs; nor above 1s. 6d. for any distance above a mile and four furlongs, and not exceeding two miles. *f. 7.*

And a chairman may take for any distance not exceeding one mile, 12d. for any distance above one mile and not exceeding one mile and four furlongs, 1s. 6d. for every further distance not exceeding four furlongs 6d. and by the hour, 18d. for the first hour, and 6d. for every half hour after. *7 G. 3. c. 44. f. 13.*

9. And the commissioners may make by-laws, to bind all persons licensed, and the renters of such licences, and the drivers. *9 An. c. 23. f. 16. 1 G. 2. c. 57. f. 1.*

The same to be approved by the lord chancellor, commissioners of the great seal, two chief justices, and chief baron, or three of them. *9 An. c. 23. f. 17.*

10. And if any hackney coachman shall refuse to go at, or exact more for his hire, than according to the above act, or by-laws; he shall forfeit a sum not exceeding 3l. nor under 10s. *1 G. 2. c. 57. f. 2.*

11. And if any person who shall drive a coach, or carry a chair for hire, acting under a person licensed, shall be guilty of misbehaviour, by demanding more than his fare, or giving abusive language, or other rude behaviour; he shall, on conviction on oath, forfeit not exceeding 20s. to the poor; and if he shall not be able, or refuse to pay, he shall be committed to *Bridewell* or some other house of correction, to be kept to hard labour for seven days, and receive the publick correction of the house before he be discharged. *9 An. c. 23. f. 44.*

And on misbehaviour of a coachman or chairman by abusive language, or otherwise, the commissioners may revoke his licence, or inflict on him a penalty not exceeding 3l. to the poor; and on non-payment, he shall be committed to *Bridewell* or some other house of correction, to be kept to hard labour for 30 days. *9 An. c. 23. f. 49. 7 G. 3. c. 44. f. 16.*

And in every case where any person for any offence mentioned in any law relating to the licensing and regulating of hackney coaches and chairs, shall be liable to be committed to prison; it shall be lawful for the commissioners, or any three or more of them, either to commit such offender to prison as by any former act, and for any time not exceeding one month, or to commit such offender

Hackney coaches and chairs.

der to Bridewell or other house of correction, there to be kept to hard labour for any time not exceeding one month, and also to receive the correction of the house. 7 G. 3. c. 44. f. 15.

And in all cases where they may commit offenders to Bridewell or other house of correction as aforesaid, they may commit them immediately upon such offenders being convicted before them. 10 G. 3. c. 44. f. 5.

Persons refusing
to pay.

12. And if any person shall refuse to pay, or shall deface any coach or chair, any justice may grant his warrant to bring him before him; and on proof upon oath may award satisfaction to the party, and on refusal to pay, may bind him over to the next sessions, who may determine the same. 9 An. c. 23. f. 22.

Power of the
Justices.

13. The rents and penalties to be levied by distress, by warrant of three commissioners; which distress shall be sold in ten days, returning the overplus, charges of the distress and of the warrant being first deducted (if on seven days notice they pay not the fine without such warrant); and in default of distress, to be imprisoned till paid; and if any rent shall be unpaid for 14 days, the commissioners may withdraw the licence. 9 An. c. 23. f. 12.

And moreover, the breach of the by-laws, and of these rules and orders, may be punished by any justice of the peace, mayor, bailiff, or other magistrate, where the offence shall be committed, in like manner as by the commissioners. 9 An. c. 23. f. 17. 1 G. 3. c. 57. f. 7. 4 G. 3. c. 36. 7 G. 3. c. 44. f. 19. 10 G. 3. c. 44. f. 7.

And every licensed person who shall neglect or refuse (being duly summoned for that purpose) to appear by himself or his renter, shall forfeit 10s. to be recovered as the other penalties; and if such licensed person shall neglect or refuse to appear, together with his renter, upon the third summons, the complaint may be heard and determined in his absence. 10 G. 3. c. 44. f. 6.

And all penalties levied by any justice, mayor, bailiff, or other magistrate, shall by them be transmitted to the receiver general of the duties on hackney coaches and chairs, and they shall also transmit a certificate thereof to the commissioners, within ten days after levying such penalty; on pain of 10l. half to the king, and half to him that shall sue. f. 8.

Note; the clause in the act of the 12 G. c. 12. above-mentioned, was only to continue for 18 years; but by the

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Hackney coaches and chairs.

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the 16 G. 2. c. 26. it was continued to *June 24, 1760, &c.* and by the 33 G. 2. c. 25. is further continued during such time as any former act relating to the licensing of hackney coaches or chairs, or any part thereof, shall be in force.

Which acts, as to the time of their continuance, seem to stand thus: The 9 *An. c. 23.* so far as it relates to this subject, was made to continue for 32 years; and the 10 *An. c. 19.* so far as it relates to this subject, was made to continue for 31 years; the 1 *G. 2. c. 57.* which explains and amends the 9 *An. c. 23.* doth consequently attend the fate of the same act of the 9 *An.* Now the 3 *G. c. 7. f. 1.* made the said duties perpetual (subject to redemption by parliament), and perpetuated in like manner all the clauses in the said acts for the recovery of the said duties. The 16 G. 2. c. 26. (by mistake, as it seemeth) recites the said acts as temporary only, and continues them along with the said act of the 12 G. to *June 24, 1760, &c.* And the 33 G. 2. c. 25. reciting the duties as perpetual (subject to redemption by parliament as aforesaid) seemeth to suppose, that nevertheless the clauses in the said acts for the recovery of the said duties are only temporary and near expiring; and therefore enacteth, that the several clauses in the said acts relating to the power of the commissioners and justices for the recovery of the said duties, shall be in force during such time, as any other part of the said acts relating to the licensing of hackney coaches or chairs shall be in force (that is, as it seemeth, until the said duties shall be redeemed by parliament).

Harbour filling up. See *Rivers and Navigation.*

Hares. See *Game.*

Harepipes. See *Game.*

Hawkers and pedlars.

1. **T**HERE shall be paid by every hawker, pedlar, *Licence duty,* petty chapman, or any other trading person going from town to town, or to other mens houses, and travelling

travelling either on foot, or with horse, horses, or otherwise (except as herein after excepted), carrying to sell, or exposing to sale any goods, wares, or merchandizes, a duty of 4 l. for each year. And every person so travelling with a horse, ass, mule, or other beast bearing or drawing burden, shall pay 4 l. for each year he shall so travel with, over and above the said first mentioned duty of 4 l. 9 s. 10 W. c. 27. s. 1.

Trading person going from town to town] T. 31 G. 2. *Rex v. Little*. The conviction, being removed by certiorari, did set forth, that one *Thomas Preston*, gentleman, came before the justice, and informed him, that the defendant *Thomas Little*, in the parish of St. Mary, in the city and county of the city of *Litchfield*, was found offering to sale silk handkerchiefs, and trading as an hawker, pedlar, or petty chapman; and that the said *Thomas Little* did not, altho' required so to do, produce any licence as the law in that case directs: That the said *Thomas Little*, being brought before the justice doth confess, that he the said *Thomas Little* did offer to sell silk handkerchiefs to the said *Thomas Preston*, in such manner as is mentioned in the aforesaid information; and that he had no licence for selling thereof: Whereupon the justice doth adjudge, that the said *Thomas Little* is an hawker within the true intent and meaning of the statute in that case made, and is guilty of the offence in the said information laid to his charge.——It was moved to quash this conviction, upon two exceptions, 1. With respect to the person; that he is not brought within the description of the acts, as going from town to town, and travelling on foot, or with horse, horses, or otherwise: but he is only generally described to be a person that traded as an hawker and pedlar, and offered to sell a parcel of silk handkerchiefs to the informer. 2. With respect to the offence; the evidence is the defendant's own confession; and the confession extends no further than barely to the simple fact of offering to sale silk handkerchiefs in such manner as is charged upon him.——By lord *Mansfield* Ch. J. A single act of selling a parcel of silk handkerchiefs to a particular person, is not a proof that he was such a hawker, pedlar, or petty chapman, as ought to take out a licence, by virtue of the acts of parliament. It is certainly of the essence of the crime of not producing a licence, that he must be such a person as ought to take out a licence. And the confessing is only of the fact, that he offered to sell

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sell the handkerchiefs to *Thomas Preston*; not that he traded as an hawker. Convictions ought to be taken strictly; and it is reasonable that they should be so, because they must be taken to be true against the defendant. I do not say, that it is necessary to define exactly, what a hawker, pedlar, or petty chapman is. But it is necessary to alledge and shew that he sold the goods, or traded as one.——

Mr. justice *Denison* concurred, for the same reasons; and thought the material averment to be here wanting; it not being averred that he was such a hawker, pedlar, or petty chapman, as ought to take out a licence.— By Mr. justice *Wilmot* (Mr. justice *Foster* being absent): I am clearly of the same opinion. For certainly a man may sell goods as a hawker, pedlar, or petty chapman, without being such a person as is obliged to take out a licence. And if he is not obliged to take out a licence, most undoubtedly he ought not to be convicted in a penalty for not producing one. Now here, it appears to me, that the justice hath convicted the man of an offence, of which he hath not proved him to be guilty. And by the court unanimously, the conviction was quashed. *Burrow. Mansfield. 609.*

Exposing to sale any goods, wares, or merchandizes] But by the 9 G. 2. c. 35. he shall not, by virtue of such licence, sell or offer to sale any tea or spirituous liquors (altho' he have a permit with the same); but the person to whom the same shall be offered may seize and carry the same to the next warehouse, and may seize the offender and carry him before a justice, to be by him imprisoned and prosecuted for the penalties incurred for selling or offering the same to sale without licence. *s. 20.*

And by the 7 G. 3. c. 43. if any foreign cambrick or French lawn shall be found in the possession of any hawker, pedlar, or petty chapman; he shall forfeit the same, and also all the other goods in his pack, and shall also be adjudged to have forfeited his licence: half the said goods to be disposed to the use of the king, and half to the officer who shall sue for the same; and if no officer shall sue within one month, then any other person may sue.

For each year he shall so travel with] The sense is here manifestly imperfect. The intention of the act undoubtedly was to express, that over and above the first duty of 4*l.* a further duty of 4*l.* should be paid for every horse, ass, mule, or other beast: Otherwise a man may carry in
I a waggon

hawkers and pedlars.

a waggon as many goods as would furnish a large shop, for the same duty as he may carry one horse load. And so he may, as the act now stands. Thus in the case of *K. and Robotham, H. 3 G. 3.* On a conviction upon this act being removed into the king's bench by certiorari, exception was taken, that the conviction was, for not having a licence to produce for *each horse* he travelled with, although it appeared that he had a regular licence to travel with *an horse*; which licence justified his travelling with *one or more*: For the words of the act are, that he shall pay the said additional duty *for each year he shall so travel with*, and not *for each horse* or other beast of burden. And the conviction was quashed.——And the mistake is no other than this: By the 8 & 9 *W. c. 25.* Every pedlar or other such person travelling as aforesaid was to pay (for that year only) a duty of 4*l.* and a further additional duty of 4*l.* *for each horse, ass, or mule, or other beast bearing or drawing burden, he or she should so travel with.* This statute of the 9 & 10 *W. c. 27.* re-enacts the same for three years (and the said duties afterwards were made perpetual); only in this latter act, the words in the transcript have been dropped, which are necessary to compleat the sense, and to answer the intention of the legislature; for, evidently, the sentence ought to have run thus,——*the sum of 4*l.* for each year, for each horse, ass, or mule, or other beast bearing or drawing burden, he or she shall so travel with.*

Payment of the duty.

2. And every such person, on receiving his licence, shall pay to whom the commissioners of the treasury, or three of them, shall appoint for licensers, or their deputy, half the duty, and give security by bond, with one or more sureties, to the king, for payment of the other half at the end of six kalendar months, unless he shall chuse to pay down the other half, in which case he shall be allowed after 2*s.* in the pound for prompt payment. 9 & 10 *W. c. 27. f. 2.*

Granting the licence.

3. And the commissioners for these duties, or two of them, shall (on the receipt and security given as aforesaid) grant licences to be by them subscribed; for which shall be taken only 1*s.* unless such person travel with a horse or beast, and in that case shall be paid only 2*s.* above the duties. 9 & 10 *W. c. 27. f. 4.*

Trading without a licence, or refusing to shew it.

4. And if any such person be found trading as aforesaid, without, or contrary to such licence; or if on demand made by any justice of the peace, mayor, constable, or other peace officer of any town corporate or borough, where

Hawkers and pedlars.

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where he shall so trade, shall not have his licence ready to be produced; *he shall forfeit* 12l. half to the informer, and half to the poor of the parish wherein the offender shall be discovered; and for nonpayment thereof, shall suffer as a common vagrant, and be committed to the house of correction. 9 & 10 W. c. 27. s. 3. 3 & 4 An. c. 4. s. 4.

He shall forfeit 12l.] M. 5 G. K. and Beck. Although the statute here mentions nothing of *conviction*, yet nevertheless there ought to be a formal conviction; and a certiorari will lie for the removal of it. Str. 127.

And if any constable or other officer aforesaid, shall refuse or neglect, upon due notice, or his own view, to be aiding in the execution hereof, being thereunto required, and be thereof convicted on oath of one witness before one justice where the offence shall be committed; he shall forfeit 40 s. by distress and sale by warrant of such justice, half to the poor, and half to the prosecutor. 9 & 10 W. c. 27. s. 7.

And any person may seize and detain any such hawker, pedlar, petty chapman, or other trading person, till he produce his licence if he have any, or if he be found trading without a licence, for such reasonable time as he may give notice to the constable, churchwarden, overseer, or some other parish officer, who shall carry such person so seized before a justice; who shall, either on confession, or proof by witness upon oath, convict the offender, and by his warrant cause the sum of 12l. to be forthwith levied by distress and sale of the offender's goods, wares, or merchandizes. 9 & 10 W. c. 27. s. 8.

5. If any person shall lend or let out to hire his licence, Lending licences. he and also the person trading under colour thereof, shall forfeit each 40 l. half to the king, and half to him that shall sue in any court of record. 3 & 4 An. c. 4. s. 4.

6. If any person shall forge or counterfeit, or travel Counterfeiting licences. with a forged or counterfeited licence; he shall forfeit 50 l. half to the king and half to him that shall sue in the courts at Westminster, and shall also be liable to be punished for forgery. 9 & 10 W. c. 27. s. 5.

7. But nothing herein shall prohibit any person from Exceptions. selling acts of parliament, forms of prayer, proclamations, gazettes, licensed almanacks, or other printed papers licensed by authority; or any fish, fruits, or victuals; nor to hinder any person who is the real worker or maker of any goods or wares, or his children, apprentices, servants,

or

Hawkers and pedlars.

or agents, from carrying abroad, exposing to sale, or selling any of the said goods and wares of his own making, in any publick fair, market, or elsewhere; nor any tinker, cooper, glazier, plumber, harness mender, or other person usually trading in mending kettles, tubs, household goods, or harness, from going about and carrying with him proper materials for mending the same. 9 & 10 *W. c. 27. f. 9.*

Also persons trading in the woollen and linen manufactures, and selling the same by wholesale, shall not be deemed hawkers, pedlars, or petty chapmen. 3 & 4 *An. c. 4. f. 14.*

Also no maker or wholesale trader in *English* bone lace, shall be deemed a hawker, pedlar, or petty chapman. 4 *G. c. 6.*

Also nothing herein shall extend to hinder any person from selling any goods in any publick fair or market. 9 & 10 *W. c. 27. f. 12.*

And nothing herein shall give any power for the licensing of such persons to sell any goods in cities, boroughs, towns corporate, or market towns, otherwise than they might have done before. 9 & 10 *W. c. 27. f. 15.*

Treble costs.

8. Persons sued for any thing done berein, may plead the general issue, and have treble costs. 9 & 10 *W. c. 27. f. 6.*

Hawks and hawking. See *Game*.

Hay.

THE 2 *W. sess. 2. c. 8.* and 8 & 9 *W. c. 17.* and 31 *G. 2. c. 40.* do contain regulations concerning the selling of hay, straw, and cattle within the bills of mortality, which are not general enough to be here inserted at large.

Hedge breaking. See *Wood*.

Hemp.

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VOL. I.

Hemp.

IT shall not be lawful to any person to water any hemp or flax, in any river, running water, stream, brook, or other common pond, where beasts used to be watered; on pain that every person offending shall forfeit 20 s. half to the king, and half to the party grieved, or any other who shall sue in any court of record, leet, or law day. 33 H. 8. c. 17.

Herring fishery.

IF any person shall damnify or destroy, without consent of the society of the free *British* fishery, any of the nets, sails, cordage, stores, or other materials belonging to the said society; he shall, on conviction on the oath of two witnesses before one justice, forfeit to the society treble value, by distress; and for want of sufficient distress, to be committed to the house of correction to hard labour for any time not exceeding three months, or till satisfaction be made. Prosecution to be in six kalendar months. 28 G. 2. c. 14. s. 9.

Hides and skins. See **Leather**.

High Constable. See **Constable**.

High treason. See **Treason**.

Highways in general.

NOTE; Bridges repaired by the parish or township, and which consequently come under the cognizance of the surveyor of the highways are comprehended under this title: County bridges are treated of under title **Bridges**.

For the ordering of streets in cities and market towns, see title **Scavengers**.

THIS title, which before was greatly confused, is now rendered clear and intelligible by two judicious acts made in the 7 G. 3. repealing, in whole or in part, 35 acts of parliament relating to this subject, and re-enacting the substance of all the same, with divers considerable amendments: Which with some small alterations made by the 8 G. 3. c. 5. are inserted under the following sections.

I. Concerning the highways in general.

II. Concerning turnpike roads in particular.

I. Concerning the highways in general.

I. What is a highway.

II. Of the special sessions to be held for the highways.

III. Appointment of surveyors.

IV. Who are liable to repair, and in what proportion.

V. Composition instead of labour.

VI. Working.

VII. Materials how to be procured.

VIII. Removing obstructions and annoyances.

IX. Direction posts to be set up.

X. Penalty of destroying blocks, posts, or battlements of bridges.

XI. Breadth of wheels, and number of horses.

XII. Widening of highways.

XIII. General assessment of 6d. in the pound.

XIV. Penalty of hindring the execution.

XV. Penalty of the surveyor for neglect of duty.

XVI. Surveyor's account.

XVII. Presentment or indictment of highways in general.

XVIII. Pre-

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highways in general.

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XVIII. *Presentment by a justice.*

XIX. *Levyng and application of fines and forfeitures.*

XX. *Appeal.*

XXI. *Limitation of actions.*

I. *What is a highway.*

1. There are three kinds of ways; (1.) A foot way. Three kinds of highways. (2.) A foot and horse way, which is also a pack or drift way. (3.) A foot, horse, and cart way. *1 Inst. 56.*

2. It seemeth that any one of the said ways, which is common to all the king's people, whether it leads directly to a market town, or only from town to town, and does not terminate there, but is also a thoroughfare to other towns, may properly be called a highway. *1 Haw. 201.* Difference between a highway and a private way.

For there were highways before there were market towns. And if it were essential to the constituting of a highway, that it should expressly lead from market town to market town; then it would follow, that the lord of a market, by forfeiting or surrendering his charter, might cause that to cease to be a highway, which was a highway before; or the king, by granting a market in any place where there was no market before, might thereby consequentially change the way to it from a private way into a highway.

And therefore, the distinction which is taken in some books, concerning this matter, seems to be very reasonable; that every way from town to town may be called a highway, because it is common to all the king's subjects; and consequently that a nuisance therein is a common nuisance, and punishable by indictment; but that a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which terminates there, and is for the benefit of the particular inhabitants of such parish, house, or village only, may be called a private way, but not a highway, because it belongeth not to all the king's subjects, but only to some particular persons, each of which, as it seems, may have an action on the case for a nuisance therein. *1 Haw. 201.*

So if I have a private way without a gate, and a gate is hung up; an action lies upon the case, for I have not my way as I had before. *Litt. R. 267.*

So if one grants me a way, and afterwards digs trenches in it to my hindrance; I may fill them up again. *Godb.*

53.

But if a way which a man has, becomes not passable, or becomes very bad, by the owner of the land tearing it up with his carts, and so the same be filled with water; yet he who has the way cannot dig the ground to let out the water, for he has no interest in the soil. *Godb. 52.* But in such case, he may bring his action against the owner of the land for spoiling the way, or perhaps he may go out of the way, upon the land of the wrong doer, as near to the bad way as he can.

But where a private way is spoiled by those who have a right to pass thereon, and not thro' the default of the owner of the land; it seemeth that they who have the use and benefit of the way ought to repair it, and not the owner of the soil, unless he is bound thereto by custom or special agreement.

How far outlets
are part of the
highway.

3. It hath been holden, that if there be an highway in an open field, and the people have used time out of mind, when the ways are bad, to go by outlets on the land adjoining, such outlets are parcel of the way; for the king's subjects ought to have a good passage, and the good passage is the way and not only the beaten track; from whence it follows, that if such outlets be sown with corn, and the beaten track be soundrous, the king's subjects may justly going upon the corn. *1 Haw 201.*

How far a river
may be an high-
way.
Highway chang-
ed.

4. In books of the best authority, a river common to all men is called an highway. *1 Haw. 201.*

5. It seemeth to be agreed, that an ancient highway cannot be changed, without the king's licence first obtained upon a writ of *ad quod damnum* and an inquisition thereon found, that such a change will not be prejudicial to the publick; and it is said, that if one change a highway without such authority, he may stop the new way whenever he pleases; and it seemeth that the king's subjects have not such an interest in such new way, as will make good a general justification of their going in it as a common highway, but that in an action of trespass brought by the owner of the land, against those who shall go over it, they ought to shew specially, by way of excuse, how the old way was obstructed, and the new one set out; also it is said, that the inhabitants are not bound to keep watch in such a new way, or to make amends for a robbery therein committed, or to repair it. *1 Haw. 201.*

But by the 7 G. 3. c. 42. where any highways shall be inclosed after a writ of *ad quod damnum* issued, and inquisition thereupon taken; any person that shall think himself injured by such inclosure may appeal to any general quarter

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sessions to be holden within four months after such inclosure, in like manner as in cases of appeal in other matters relating to the highways: And the determination of such sessions shall be final. *f. 53.*

[Note, the writ of *ad quod damnum* is an original writ, issuing out of and returnable into the chancery, directed to the sheriff to inquire by a jury, whether such change will be detrimental to the publick, which inquisition, being a proceeding only *ex parte*, is in its own nature traversable; and heretofore the party grieved might be heard against it before the chancellor: But now, by this act, jurisdiction is given to the justices in sessions to hear and determine appeals.]

Where a new road is made, in pursuance of such writ and inquisition thereupon found, after the person who sued out the writ hath once made the said road, the parishioners ought to keep it in repair for the future; because, being discharged from the repairing of the old road, no new burden is laid upon them; but their labour is only transferred from one place to another. *3 Atk. 766.*

But if the new road lies in another parish, then the person who sued out the writ, and his heirs, ought not only to make it, but to keep it in repair; otherwise the parishioners would have a new charge upon them, and no recompence by the former road being taken away. *Id. Venner and Lucy, Jan. 29, 1764.*

Also, it is certain, that a highway may be changed by the act of god; and therefore it hath been holden, that if a water which has been an ancient highway, by degrees changes its course, and goes over different ground from that whereon it used to run, yet the highway continues in the new channel, in the same manner as in the old. *1 Haw. 202.*

An highway inclosed by virtue of a special act of parliament (for dividing and inclosing common fields, common pastures, or the like,) shall continue to be repaired by the parish or township as it was before, unless otherwise directed by the act: For if he who inclosed the ground adjoining to the highway were in such case obliged to repair, it might happen that his allotment of the common would not be worth the expence of repairing the way. *Burrow. Mansfield. 461. Rex v. Inhabitants of Flecknow. H. 30 G. 2.*

6. The freehold of the highway is in him that hath the freehold of the soil; but the free passage is for all the king's liege people. *2 Inst. 705.*

To whom the freehold of an highway be-
longeth.

Highways in general.

H. 8 G. 2. Sir John Lade against Shepherd. Upon trial of an action of trespass, a case was made ; that the place where the supposed trespass was committed, was formerly the property of the plaintiff, who some years since built a street upon it, which has ever since been used as a highway ; that the defendant had lands contiguous, parted only by a ditch, and that he laid a bridge over the ditch, the end whereof rested on the highway. And it was insisted for the defendant, that by the plaintiff's making it a street, it was a dedication of it to the publick ; and therefore however he might be liable to an indictment for a nuisance, yet the plaintiff could not sue him as for a trespass on his private property. But by the court ; it is certainly a dedication to the publick, so far as the publick has occasion for it, which is only for a right of passage : But it never was understood to be a transfer of the absolute property in the soil. So the plaintiff had judgment. *Str. 1004.*

II. Of the special sessions to be held for the highways.

The justices of every county, riding, division, city, corporation, precinct, or liberty respectively, shall hold one special sessions for the highways yearly, on the first Monday in October, or within 15 days after ; and other special sessions from time to time, whenever they shall judge proper. *7 G. 3. c. 42. s. 1, 36, 45.*

III. Appointment of surveyors.

Notice of the
time and place of
a. pointment.

1. The justices shall hold their said October sessions, at such convenient place or places within their jurisdiction, as they shall judge proper ; and shall give notice (A) of the time and place, to the constables of the respective parishes, townships, or places, at least ten days before the holding of the said sessions. *7 G. 3. c. 42. s. 1.*

Lists to be
made.

2. And on the 22d of September preceding the said sessions, unless that day be Sunday, and then on the day following, the constables, churchwardens, surveyors of the highways, and householders being assessed to any parochial or publick rate, of every parish, township, or place, for which surveyors of the highways have been usually appointed, shall assemble at the church or chapel of such parish, township, or place ; or if there be no church or chapel, then at the usual place of publick meetings, at the hour of eleven in the forenoon. And the

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the major part of them so assembled, shall make a list of the names of at least ten persons living within such respective parishes, townships or places, who each of them have an estate in lands, tenements, or hereditaments, lying within such respective parish, township, or place, in their own right, or in the right of their wives, of the value of 10 l. a year; or a personal estate of the value of 100 l.; or are occupiers or tenants of houses, lands, tenements, or hereditaments, of the yearly value of 30 l. And if there shall not be ten persons having such qualification, then they shall insert in such list the names of so many as are so qualified, together with the names of so many of the most sufficient and able inhabitants not so qualified, as shall make up the number ten, if so many can be found; if not, so many as shall be there resident,—to serve the office of surveyor of the highways. 7 G. 3. c. 42.

f. 1.

3. And the constable shall, within 3 days after making the said list, give personal notices to, or cause notices in writing to be left at the places of abode of the several persons contained in such list, informing them of their being so named; to the intent that they may severally appear before the justices at the said special sessions, to accept such office, if they shall be appointed thereto, or to shew cause, if they have any, against their being appointed. *id.*

Notice to the persons in the list.

4. And the constable shall return such list, to the justices at their said special sessions. *id.*

List returned to the special sessions.

5. And the said justices then and there, from the said lists, according to their discretion and the largeness of the parish, township, or place, shall by warrant under their hands and seals (B) nominate or appoint one, two, or more of such persons as aforesaid, to be surveyor or surveyors of the highways of every such parish, township, or place respectively, for the year ensuing. *id.*

Appointment and charge.

Which nomination and appointment shall by such constable be notified to every such person so nominated and appointed, within 3 days after such nomination, by serving him with the said warrant, or by leaving the same or a true copy thereof at his house or usual place of abode. *id.*

And such persons so nominated shall be surveyors of the highways for the year ensuing, and shall take upon them and duly execute the said office. *id.*

And the said justices shall then and there give to such of the said surveyors as shall personally appear before them,

them, a charge, for the better performance of their duty
id.

Penalty on refusal to serve, and others appointed.

6. If any of the persons so nominated and served with the said notice, shall refuse or neglect to appear and accept the said office, if appointed thereto in manner aforesaid, at the special session; or shall not, within 6 days after being served with such warrant of appointment, signify his acceptance thereof, either in person, or by writing, to one of the said justices; he shall forfeit 5 l. 7 G. 3. c. 42. *f. 1.*

And in case of such neglect or refusal, the said justices or any two of them, at the said sessions, or at any time afterwards, may nominate and appoint some other fit person or persons named in the said list; who, upon being served with the warrant of appointment as aforesaid, shall within one week afterwards signify to the said justices or one of them, either in person or by writing, his or their acceptance of the said office; and in case of neglect or refusal as aforesaid, shall forfeit the like sum of 5 l. *id.*

And if no such list shall be returned, or the person nominated shall not take upon him the office, or shall die in the execution thereof; the said justices, or any two of them, shall appoint such person as they shall think proper to execute the same. *id.*

Penalty of not making or returning the list, or giving notice.

7. If the constables, churchwardens, surveyors of the highways, and such householders as aforesaid, shall neglect or refuse to make such list; or if such constable shall not return such list when made, and give such notice and serve such warrant as aforesaid; every of them so neglecting or refusing shall forfeit 40 s. 7 G. 3. c. 42. *f. 1.*

Appointment of special surveyors, with salaries.

8. Provided always, that if two parts out of three of the persons so to be assembled, shall agree in the choice of any particular person of skill and experience to serve the said office, and in settling of a certain salary for his trouble therein, to be allowed by the said justices, and paid out of the penalties, forfeitures, and composition money for that year; and shall return the name of such person, together with the list as before directed, to the justices at their said October sessions: In such case, it shall be lawful for the said justices, if they shall think proper, to appoint such person to be surveyor. Which surveyor so appointed, shall in all respects have the same power, and be liable to the same penalties and forfeitures for neglect of duty, as if he had been chosen and appointed from the list to be

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returned as aforesaid. And the said justices shall likewise in their discretion allow such salary so settled as aforesaid. 7 G. 3. c. 42. s. 2.

IV. Who are liable to repair, and in what proportion.

1. It seems to be agreed, that of common right (that is, ^{Parish in general} by the common law) the general charge of repairing all highways lies on the occupiers of the lands in the parish wherein they are: But there is no doubt, but particular persons may be burdened with the general charge of repairing a highway, in two cases; namely, in respect of an inclosure, or by prescription.

2. For, a man may be bound to the repair of a highway, in respect of an inclosure of the land wherein it lies, ^{Repairing in respect of an inclosure.} as where the owner of lands not inclosed, next adjoining to the highway, incloseth his lands on both sides thereof; in which case, he is bound to make a perfect good way, and shall not be excused for making it as good as it was at the time of the inclosure, if it were then any way defective; because before the inclosure, the people used, when the way was bad, to go for their better passage, over the fields adjoining, out of the common track, which liberty is taken away by the inclosure. 1 Haw. 202.

And if the way is not sufficient, any passenger may break down the inclosure, and go over the land, and justify it, till a sufficient way is made. 3 Salk. 182.

Also it hath been holden, if one inclose land on one side, which hath been antiently inclosed of the other side, he ought to repair all the way; but if there be not such an antient inclosure of the other side, he ought to repair but half that way. 1 Haw. 202.

Therefore if there be an old hedge time out of mind on one side of the way, and a person having land on the other side makes a new hedge, such person shall be charged with the whole repair. 1 Sid. 464.

But if one person makes an hedge on one side of the way, and another person makes an hedge on the other side of the way, they shall be chargeable to the repair thereof by moieties. *id.*

But it is said, that wherever one is bound to repair a highway, or part thereof, in respect of an inclosure, and lays it open again as it was before, he shall be freed from the charge of such repair. 1 Haw. 202.

3. A particular person may be bound to repair a highway, in respect of a prescription; and it is said, that a ^{Repairing by prescription.} cor-

Highways in general.

corporation aggregate may be compelled to do it, by force of a general prescription, that it ought and hath used to do it, without shewing that it used to do so in respect of the tenure of certain lands, or for any other consideration; because such a corporation in judgment of law never dies, and therefore if it were ever bound to such a duty, it must needs continue to be always so; neither is it any plea, that such corporation hath always done it out of charity, for what it hath always done, it shall be presumed to have been always bound to do: But it is said, that a person cannot be charged with such a duty, by a general prescription from what his ancestors have done, unless it be for some special reason, as the having land descended from such ancestors, which are holden by such like service.

1 *Haw.* 202.

Yet it seems, that an indictment charging a tenant in fee simple, with having used of right to repair such a way by reason of the tenure of his land, is certain enough, without adding, that his ancestors or those whose estate he hath, have always so done; for that is implied. 1 *Haw.* 203.

But the indictment must set forth, where those lands lie. 2 *H. H.* 181.

Under which head of prescription, may be considered the case where, not the whole parish, but particular townships or other divisions within the parish, have for time immemorial repaired particular roads within that parish: Which prescription, being ancient, and without interruption, is presumed to have had its origin by licence on an inquisition of *ad quod damnum*, or other legal commencement. And it would be very prejudicial in large parishes, if every inhabitant were liable to repair throughout that whole parish, when the time occupied in going and returning might exceed the time appointed by the law for labour. And this consideration is favoured by the late statute for reducing all the general highway acts into one, which enacts, that surveyors shall be appointed for every parish, township, or place, for which surveyors had been usually appointed.

But a private agreement amongst the inhabitants, not being ancient, nor confirmed on an inquisition of *ad quod damnum*, that some of the inhabitants shall repair one part of the highway, and some of them another part, is not good: It may be binding amongst the parties thereunto, so as on a breach thereof one party may have an action upon the case against the other; but with respect to the

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publick, they continue equally liable as before; for such private agreement cannot alter the law.

4. The surveyor shall from time to time give information upon oath to the justices or two of them, of all such highways, and of all bridges, causeways, and pavements upon such highways as are out of repair, and ought to be repaired by any person or persons, bodies politick or corporate, by reason of any grant, tenure, limitation or appointment of any charitable gift; and the said justices shall limit a time for repairing the same; of which, notice shall be given by the surveyor to the occupier or occupiers of the lands or tenements liable to such repairs, or to such other person or persons, bodies politick or corporate, as are chargeable with the same: And if such repairs shall not be effectually made within the time so limited; the said justices shall present such highways so out of repair, together with the person or persons, bodies politick or corporate, liable to repair the same, at the next general quarter sessions for the place where such highway shall lie: And the justices there, if they see cause, may direct the prosecution to be carried on at the general expence of such county, city, precinct, or liberty, and to be paid out of the general rates within such jurisdiction. *7 G. 3. c. 42. s. 14.*

Charities given for repairing.

And where any lands have been or shall be given for the maintenance of causeways, pavements, highways, and bridges; the persons enfeoffed or trusted therewith shall let them to farm at the most improved yearly value, without fine. And the justices in their open sessions shall inquire, by such ways and means as they shall think fitting, into the value of such lands; and order the improvement and employment of the rents and profits thereof, according to the direction of the donor, if they find that the persons so intrusted have been negligent or faulty in the performance of their trust. Except such lands as have been given for the uses aforesaid to any college or hall in either of the universities of this kingdom, which have visitors of their own. *s. 33.*

5. The surveyor, together with the inhabitants and occupiers of lands, tenements, and hereditaments, within each parish, township, or place, shall at proper seasons in every year use their endeavours for the repairing of the highways, and shall be chargeable thereunto as followeth; viz.

Proportion of labour.

Every person keeping a *team, draught or plough*, in such parish, township, or place, shall, six days in every year,

Highways in general.

to be computed from Michaelmas to Michaelmas, find and send on every day and at every place to be appointed by the surveyor, one wain, cart, or carriage, furnished after the custom of the country, with oxen, horses, or other cattle, and all other necessities meet to carry things convenient for that purpose, and also two able men with each wain, cart, or carriage respectively :

And every person occupying lands, tenements, or hereditaments of the yearly value of *fifty pounds* or above, shall in like manner send one wain, cart, or carriage, furnished with not less than three horses, or four oxen and one horse, or two oxen and two horses, and two able men to each wain, cart or carriage (except in those parts of this kingdom where carts with single horses are generally used; and in such places, every such person shall in like manner send two carts, with one horse and one able man to each cart); and in like manner for every fifty pounds a year respectively, which he, she, or they shall so occupy in such parish, township, or place; and shall likewise find and send one sufficient labourer for every 10l. a year which he, she, or they shall occupy above 50l. and under 100l.; and so for every 10l. that each progressive and intermediate annual value of 10l. shall fall short of the further increase of 50l.

And every person occupying lands, tenements, or hereditaments, in any parish, township, or place, of the yearly value of *ten pounds and under fifty pounds*, who shall not keep such team, draught, or plough, shall find and send one sufficient labourer for every 10l. a year, which he, she, or they shall so occupy :

And every person, not keeping a team, draught, or plough, but occupying lands, tenements, or hereditaments *under the yearly value of ten pounds* in every parish, township, or place; and also *every man inhabiting therein* respectively, and being *of the age of 18 and under 65*, not being an apprentice or menial servant, nor having performed the said duty or paid composition for the same in any other place for that year, shall by themselves or one sufficient labourer for every of them, upon every of the said days, work and labour in the amendment of the said highways, as they shall be directed by the surveyor :

And if any of the said carriages shall not be thought needful by the surveyor, on any of the said days; then, every such person, who should have sent and found any such carriage, shall, according to the notice to be given

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to him by the surveyor, send for every carriage so spared three able men, or pay to the surveyor 4s. 6d. in lieu thereof. 7 G. 3. c. 42. s. 23.

Provided, that nothing herein shall extend to oblige any person keeping a team, draught, or plough, and not occupying lands, tenements, or hereditaments above the yearly value of 50l. to find and send, or compound for, more than one wain, cart, or carriage, with men to attend the same, in manner as above directed: And if any person shall keep a team, draught, or plough, or any part thereof, for part of the year in one parish, township, or place, and for part of the year in another; the duty shall be performed by such team, draught, or plough, in the parish, township, or place, where such person shall usually reside. s. 27.

[Upon the latter clause in this proviso, a great doubt hath been formed, with respect to persons occupying lands in different parishes or townships. If this proviso had not been, the law would have stood upon the former part of the act, that the highway duty shall be performed in the parish, township, or place where the lands lie; and that every person keeping a team, draught, or plough in any parish, township, or place, shall send a wain, cart, or carriage for the repair of the highways in such parish, township, or place: and consequently, that a person keeping a team, draught, or plough in different parishes, townships, or places, should in every such parish, township, or place, send a wain, cart, or carriage. Then comes the proviso, and says, that if such person shall not occupy lands above 50l. a year in the whole, he shall not be obliged to find more than one wain, cart, or carriage: And that the duty shall be performed in that parish, township, or place, where he shall usually reside. And the difficulty lies upon the universality of this latter clause. As, suppose a person occupies above 50l. a year in different townships, as for instance 30l. a year in one township, and 40l. a year in another township, and keeps a team, draught, or plough for part of the year in one of the said townships, and part in the other; the question is, whether this is within the proviso. If it is, he shall perform the whole highway duty, for 70l. a year, in that township where he usually resides: If it is out of the proviso, he shall send one wain, cart, or carriage in both the said townships. The equity and intention of the statute seem to incline to this latter opinion, namely, that the whole proviso shall be taken together, only as remedying an inconvenience

convenience which would otherwise have fallen upon persons occupying small tenements in different parishes or townships; but that persons occupying above 50l. a year in the whole shall be liable as if the proviso had not been made: Otherwise the proviso introduceth a much greater inconvenience than that which it proposes to remedy; for if it is to be understood in the aforesaid latitude of interpretation, then it will follow, that if a person occupies 20 s. a year in the township where he usually resides, and 500l. a year or more in another township, and keeps a team, draught, or plough for part of the year in one of the said townships and part in the other, he shall perform the whole highway duty in that township where he usually resides, and the other township can have no remedy but by an assessment of 6d. in the pound, if the justices shall think that needful; and this introduceth an inconvenience on the other hand, for if the occupier of the land had been permitted to perform his statute labour in the proper township, he might thereby have rendered such assessment unnecessary: which assessment, when levied, lays him in effect under a double charge for the same lands.

There is another case, which is more clearly out of the said proviso, where a person keeps a team, draught, or plough in one township, and occupies lands in another township, but doth not keep a team, draught, or plough, or any part thereof, in that other township (as suppose it be grazing ground); it seemeth somewhat evident that in this case the statute duty shall be severed, and he shall perform the duty for the team, draught, or plough in that township where it is exercised, and in the other township shall perform the duty according to the annual value of the lands there.

But concerning these points, as there is a diversity of opinions among the justices in the country, an explicit declaration might be of use.]

Every person] It hath been holden that persons in *holy orders* are within the purview of the statutes for the highways, in respect of their spiritual possessions, as much as any other persons in respect of any other possessions; for the words are general, and there is no kind of intimation that any particular persons shall be exempted more than others. 1 *Haw.* 204.

Also *women*, occupying lands as above, are required to send carriages and men respectively, by virtue of the express words *he, she, or they*.

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But by the 2 G. 3. c. 20. No serjeant or private man, serving in the *militia*, either for himself or as a substitute, shall during the time of such service, be liable to do any highway duty, commonly called statute work. *f.* 76.

V. Composition instead of labour.

Any person, liable to perform the said duty, by sending a wain, cart, or carriage, with men, horses, or oxen, in manner aforesaid, may compound for the same, if he, she, or they shall think fit, by paying to the surveyor, two days before the first day on which the duty shall by notice from the surveyor be required to be performed, such sum as the justices at their said special sessions to be held on the first Monday in October or within 15 days after in every year, shall adjudge and declare to be reasonable, not exceeding 6 s. nor less than 3 s. for each day; and in default of their adjudging and declaring the same, the sum of 4 s. 6 d.; for and in lieu of every such day's duty. And any person liable to send a labourer or labourers, in respect of his or her occupying lands, tenements, or hereditaments of the yearly value of 10 l. or upwards, by such progression as aforesaid, may compound for the same, if he or she shall think fit, by paying to the surveyor for every 10 l. a year the sum of 8 d. And every householder or other person, occupying lands, tenements, or hereditaments, under the yearly value of 10 l. and above 3 l. may compound for the same, if he or she shall think fit, by paying to the surveyor the sum of 6 d. And every other inhabitant, liable to perform such duty or labour, may compound for the same, if he or she shall think fit, by paying to the surveyor the sum of 4 d. in lieu of every such day's duty or labour, at least two days before the first day on which such duty or labour shall by such notice be required to be performed. 7 G. 3. c. 42. *f.* 25.

Provided, that the surveyor of every parish, township, or place, where the number of inhabitants liable to perform such duty shall consist of 200 persons or upwards, shall on the first or second Sunday in January every year, cause ten days notice at least to be given in the church or chapel of such parish, township, or place, of the time and place when and where the persons inclined to compound for the said duty may pay their composition money; and in such places no composition shall be permitted, unless the same shall be paid at the day, or within

Highways in general.

in the time, to be expressed in such notice. But in cases where the occupation of any lands, tenements, or hereditaments shall be changed, or any new occupant or inhabitant shall come to reside after the time appointed for such payment; then such new occupant or inhabitants shall be allowed to compound, provided they pay the composition money to the surveyor within 14 days after they shall enter or come to reside. *f. 26.*

And whereas by several acts of parliament concerning turnpike roads, a certain part of the statute duty is or may be directed to be performed on such roads; and it may happen in some places that the several persons liable thereto may have compounded for the same: in such case, the surveyor of the highways of the parish, township, or place, where such composition shall have been made, shall pay to the treasurer or surveyor of such turnpike roads a proportionable part of the composition money* so received, according to the number of days duty which such persons were liable to perform on such turnpike roads. *f. 28.*

VI. Working.

The justices, at any special sessions, may by writing under their hands and seals, order those roads which do most want repair to be first amended, and at what time or in what manner the same shall be performed. *7 G. 3. c. 42. f. 16.* If the justices make no such order, then the surveyor shall have the like power of direction.

And the surveyor shall from time to time give to, or cause to be left at the house or usual place of abode of every person liable to perform such duty or labour, four days notice at the least, of the day, hour, and place, upon which each of the said days duty shall be required to be performed; and shall fairly and equally demand and require such duty and labour, from every person liable, without favour or partiality. *f. 24.*

And all such persons as aforesaid shall respectively have and bring with them such shovels, spades, picks, mattocks, and other tools and instruments, as are useful and proper for the purpose. And all the said persons and carriages shall diligently perform the work to which they shall be appointed by the surveyor, for eight hours in every of the said days, within such parish, township, or place, or in getting and carrying materials in and from any other parish, township, or place, to be employed in the

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the repair of the highways of the parish, township or place, for which they shall be required to perform such duty and labour. *f. 23.*

And every person making default in finding and sending each wain, cart, or carriage furnished as aforesaid, and such able men with the same, or in performing the said duty at the time and place and in the manner before directed, or in paying the composition for the same as aforesaid; shall forfeit 10 s. And every person making default in sending any such labourer or in performing such labour, at the time and place and in the manner before directed, or in paying such composition money for the same as aforesaid; shall forfeit 1 s. 6 d. And the surveyor shall, within 21 days after such default made, proceed for the recovery of the penalty or forfeiture. (C. D. E.) *f. 24.*

VII. Materials how to be procured.

1. It shall be lawful for the surveyor, to take and carry away, or cause to be taken and carried away, so much of the *rubbish or refuse stones* of any quarry within the parish, township, or place where he shall be surveyor (except such as shall have been got by the surveyor of any turnpike road), without the licence of the owner, as he shall judge necessary for the amendment of the said highways; but not to dig or get stone in such quarry without leave of the owner thereof:

Rubbish of quarries; materials in wastes or commons; gathering loose stones.

And also it shall be lawful for such surveyor, for the use aforesaid, in any *common or waste ground, river or brook* therein, within the parish, township, or place where he shall be surveyor, or within any other parish, township, or place, wherein gravel, sand, chalk, stone, or other materials are likely to be found, to search for, dig, and get the same; so as not thereby to prejudice or damage any building, highway, or ford, nor dig or get the same out of any river or brook within the distance of 100 feet above or below any bridge, nor within the like distance of any pond, dam, or wear:

And likewise to *gather stones* lying upon any lands or grounds within the parish, township, or place, where such highway shall be, for such service and purpose:

And to take and carry away so much of the said materials, as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of

Materials in private grounds.

the said highways, without making any satisfaction for the same. 7 G. 3. c. 42. f. 19.

2. And also it shall be lawful for the surveyor, for the use aforesaid, to search for, dig, get, and carry away, sand, gravel, chalk, stone, or other materials (if sufficient cannot conveniently be had within such commons or waste lands) in any of the several or inclosed lands of any person whomsoever, within the parish, township, or place, for which he shall be surveyor (not being a garden, yard, avenue to an house, lawn, park, paddock, or inclosed plantation); making satisfaction for the damage to be done to such lands by the getting and carrying away the same, as shall be agreed upon between him and the owner, occupier, or other person interested, in the presence and with the approbation of two or more substantial inhabitants of such parish, township, or place; and if they cannot agree, then such satisfaction and recompence shall be settled and ascertained by one justice. 7 G. 3. c. 42. f. 20.

And for reimbursing the expences thereof, upon application made by such surveyor to the justices at their special sessions, and oath made of the sum by him *bona fide* expended for the purpose aforesaid, the said justices or any two of them shall by their warrant cause an equal rate to be made after the manner prescribed by the 43 *Eliz.* for relief of the poor; which rate, being confirmed and allowed by the said justices, shall be collected by the surveyor; and if any refuse to pay, the same shall be levied by the said surveyor by distress. f. 21.

Filling up pits or holes.

3. If any surveyor or person employed by him shall, by reason of the searching for, digging, or getting any gravel, sand, stones, chalk, or other materials, make or cause to be made any pit or hole, in any such lands, rivers, or brooks as aforesaid, wherein such materials shall be found; such surveyor or person shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired during such time as the said pit or hole shall continue open: And shall, within 3 days after any such pit or hole shall be made, where no gravel, stone, or materials shall be found, cause the same to be forthwith filled up and levelled: And where any such materials shall be found, he shall, within 14 days after having dug up sufficient materials in such pit or hole, cause the same to be filled up, sloped down, or fenced off, and so continued. f. 22.

And if such surveyor or other person shall neglect to fill up, slope down, or fence off such pit or hole in man-

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ner and within the time aforesaid; he shall forfeit 10 s. for every such default: And if he shall neglect to fence off such pit or hole, or to slope down the same as aforesaid, for 10 days after he shall have received notice for either of those purposes from a justice, or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands as aforesaid, and such neglect and notice shall be proved upon oath before one justice; he shall forfeit not exceeding 10 l. nor less than 40 s: to be laid out in the fencing off, filling up, or sloping down such pit or hole, and toward the repair of the roads, as the said justice shall appoint. *id.*

VIII. Removing obstructions and annoyances.

1. There is no doubt, but that all injuries whatsoever Annoyances in general. to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act which will render it less commodious to the king's people, are publick nuisances at common law. *1 Haw. 212.*

And by the common law, any one may abate a nuisance to a highway, and remove the materials, but not convert them to his own use. *1 Haw. 214.*

Also it seemeth, that an heir may be indicted for continuing an incroachment, or other nuisance to a highway, begun by his ancestor; because such a continuance thereof amounts in the judgment of law to a new nuisance. *1 Haw. 214.*

To suffer the ditches adjoining to a highway to be foul, by reason whereof it is impaired, is a nuisance also at common law. *1 Haw. 212.*

And it seemeth clear, that it is a nuisance at common law, to suffer the boughs of trees growing near the highway, to hang over the road in such a manner, as thereby to incommode the passage, *1 Haw. 212.*

And perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the same; and it seems clear, that any person may justify the lopping such trees, so far as to avoid the nuisance. *1 Haw. 213.*

A gate erected in a highway, is a common nuisance, because it interrupts the people in that free and open passage which they before enjoyed, and were lawfully in-

titled to; but where such a gate has continued time out of mind, it shall be intended, that it was set up at first by consent, on a composition with the owner of the land on the laying out the road, in which case the people had never any right to a freer passage than what they still enjoy. 1 *Haw.* 199.

In aid of the common law, the several following provisions have been made by statute:

Trees growing
in the highway.

2. No tree, bush, or shrub, shall be permitted to stand or grow in any highway, within the distance of 15 feet from the center thereof; but the same shall be cut down, grubbed up, and carried away, by the owner of the land or soil, within ten days after notice given to him or to his steward or agent, by the surveyor; on pain of 10s. 7 *G.* 3. c. 43. s. 3.

Hedges, ditches,
drains.

3. The possessors of the land next adjoining to any highway shall, from time to time, keep their hedges plashed, cut or pruned, right up from the roots, so as no tree, bush, or shrub, belonging to such hedge, shall stand or grow in, nor any bough or branch of any such tree (except of timber trees, and trees not being pollards) be suffered to hang over, any highway, not being 30 foot broad: And ditches, drains, or water-courses, of a sufficient depth and breadth for keeping the highways dry and conveying the water from the same, shall be made, scoured, cleansed, and kept open, and sufficient trunks, tunnels, plats, or bridges shall be made and laid where any cartways lead out of the said highways into the lands adjoining, by the occupier of such lands: And every person who shall occupy any lands adjoining to or lying near such highways, thro' which the water hath used to pass from the said highway, shall, as often as occasion shall be, open, cleanse, and scour, the ditches, water-courses, or drains, for such water to pass without obstruction: And every person making default in any of the matters or things aforesaid, after ten days notice given to him by the surveyor, shall forfeit 10s. 7 *G.* 3. c. 42. s. 4.

Straw, dung, or
other matter laid
in the highway.

4. No person shall lay in any highway any stone, timber, straw, dung, or other matter; and no person, making, scouring, or cleansing such ditches or water-courses, shall permit the soil or earth dug out of such ditches, drains, or water-courses, to remain in such highway, so as to obstruct or prejudice the same, for ten days; on pain, in either of the said cases, of forfeiting 10s. 7 *G.* 3. c. 42. s. 5.

And

And if any stone, or any hay, straw, stubble, or other matter, for the making of manure, or on any other pretence whatsoever, not tolerated by this act, shall be laid in any highway, within the distance of 15 feet from the center thereof, whereby the same shall be any way obstructed or annoyed; it shall be lawful for the owner or possessor of the lands adjacent, or any other person, to clear the highway by removing such obstruction, and to take the same to his own use. *f. 6.*

5. The surveyor shall, at such times as he shall judge proper, view all the roads, common highways, trunks, tunnels, plats, bridges, causeways, and pavements; and if he shall observe any nuisances, incroachments, obstructions, or annoyances, he shall, as soon as conveniently may be, give or cause to be given, to any person doing, committing, or permitting the same, personal notice, or notice in writing to be left at his or her usual place of abode, specifying the particulars. And if such nuisances, obstructions, or annoyances shall not be removed, and the ditches, drains, gutters, and water-courses aforesaid effectually made, scoured, cleansed, and opened, and such trunks, tunnels, plats, or bridges, made and laid, and such hedges properly cut and pruned, within 20 days after such notice given; the surveyor shall, within 20 days afterwards, do the same: And the person neglecting to make or open and cleanse such ditches, gutters, or water-courses, or to cut or prune such hedges, during the time aforesaid after such notice, shall forfeit, for every foot in length which shall be so neglected, the sum of 1d; and the surveyor shall be re-imburshed what charges he shall be at in removing such nuisances, obstructions, or annoyances, and making or opening, cleansing and scouring such ditches, gutters, and water-courses, and in making or amending such trunks, tunnels, plats, or bridges, and in cutting and pruning such hedges respectively, by the person who ought to have done the same, over and above the said forfeiture. And if such person shall, upon demand, refuse or neglect to pay to the said surveyor his charges occasioned thereby; the said surveyor shall apply to a justice, and on making oath before him of notice being given to the defaulter in manner aforesaid, and of the said work being done by such surveyor, and of the expences attending the same; the said surveyor shall be repaid by such person all such his said charges as shall be allowed to be reasonable by the said justice; or in default of payment thereof upon demand, the same shall be levied

Season of cutting
hedges or timber.

levied as other penalties and forfeitures are directed to be levied by this act. 7 G. 3. c. 42. f. 8.

6. Provided, that no person be compelled, nor any surveyor permitted, to cut or prune any hedge at any other time than between the last day of September and the last day of February; and that no person shall be obliged to fell any timber trees growing in hedges, at any time whatsoever, except where the highways shall be ordered to be enlarged as herein after directed; or to cut down or grub up any oak trees growing within such highway, or in such hedges, except in the months of April, May, June, or July; or any ash, elm, or other trees, in any other months than December, January, or February. 7 G. 3. c. 42. f. 3.

New gutters or
drains may be
made.

7. Where the ditches, gutters, or water-courses, which have been usually made, or which are herein before directed to be made, cleansed, and kept open, shall not be sufficient to carry off the water which shall lie upon and annoy the highways; in such case, it shall be lawful for the surveyor (by order of one justice) to make new ditches and drains in and thro' the aforesaid lands adjoining or lying near to such highway, or in and thro' any other lands, if it shall be necessary, for the more easy and effectually carrying off such water from the said highways, and to keep such ditches, gutters, or water-courses scoured, cleansed, and opened; and the said surveyor and his workmen may go upon the lands for that purpose. Provided, that the said surveyor make proper trunks, tunnels, platts, bridges, or arches, over such ditches, gutters or water-courses, where the same shall be necessary, for the convenient use and enjoyment of the lands or grounds thro' which the same shall be made, and from time to time keep the same in repair, and also make satisfaction to the owner or occupier of such lands which are not waste or common, for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in several or inclosed lands are herein before directed to be settled and paid (that is, after the manner of the poor rate, as by the statute of the 43 Eliz.) 7 G. 3. c. 42. f. 10.

Carriages or im-
plements of hus-
bandry left in
the highway.

8. If any person shall wilfully set, place, or leave any waggon, cart, or any other carriage, or any plough or instrument of husbandry, in the highway (except only with respect to such carriage during such reasonable time as the same shall be loading or unloading), so as to interrupt or hinder the free passage of any other carriage,

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or of his majesty's subjects; he shall forfeit 10 s. 7 G. 3. c. 42. s. 7.

9. By the 1 G. 2. c. 57. If any person driving any Drivers of car-
cart, dray, or waggon, in the streets of *London*, shall rriages misbeha-
ride upon the same, not having some other person on foot ving.
to guide the same; he shall on conviction before the al-
derman of the ward, or a justice of the peace, on oath of
one witness, forfeit 10 s. by distress and sale; half to the
informor, and half to the poor; and in default of pay-
ment, to be sent to the house of correction for three
days. s. 8.

And by the 24 G. 2. c. 43. If any carter, drayman,
carman, waggoner, or other driver shall ride upon the
same in *London* or within ten miles thereof, not having
some other person on foot to guide the same, he shall
on the like conviction, forfeit 10 s. in case such driver
shall not be the owner of such carriage; and in case he
be the owner, then any sum not exceeding 20 s. To be
recovered, levied, and applied, as by the aforesaid act of
the 1 G. 2. c. 57. And any person, though not a
peace officer, may stop and apprehend such offender, and
carry him as soon as conveniently may be before a justice;
and if any person shall resist, abuse, or prevent any
person endeavouring to apprehend such offender, or
when he is apprehended, shall rescue, or endeavour to
rescue him, he shall forfeit 20 s. in like manner. s. 8, 9.

By the 30 G. 2. c. 22. If the driver of any carriage
within *London* or *Westminster*, or in any publick street or
common highway within the bills, shall by negligence
or wilful misbehaviour, interrupt the free passage of his
majesty's subjects; he shall on conviction by confession
or oath of one witness, before one justice forfeit any sum
not exceeding 20 s. or be committed to the house of cor-
rection, or some other prison of the place where the of-
fence shall have been committed, or the offender shall
have been apprehended, to be kept to hard labour for any
time not exceeding one calendar month. The said
forfeiture to be levied by distress by warrant of such
justice; and to be half to the prosecutor, and half to the
overseers for the use of the poor of the parish or place
where the offence shall be committed, or the offender
shall be apprehended; and if there be no overseer, then
to some other officer for the use of the poor as aforesaid.
s. 7, 12.

And any person who shall see any offence committed
against this act, may by authority of this act and without

Highways in general.

any other warrant apprehend the offender, and shall with all convenient speed convey or deliver him to a constable or other peace officer of the place where the offence shall be committed or the offender shall be apprehended, in order to be conveyed before a justice, there to be dealt with according to law. *f. 13.*

And if he shall refuse to discover his name and place of abode, to the justice before whom he shall be brought; he shall be immediately delivered over to a constable or other peace officer, and shall by him be conveyed to the common gaol or house of correction of the place where the offence shall be committed, there to remain until he shall declare his name and place of abode to the said justice, or to some other justice of such place. *f. 11.*

And any person shall be admitted to be an evidence, notwithstanding his being an inhabitant of the place where the offence shall be committed. *f. 14.*

Provided, that persons punished by this act shall not be punished by any former law. *f. 15.*

And, generally, by the 7 G. 3. c. 42. Whereas many bad accidents happen, and great mischiefs are frequently done, upon the streets and highways, by the negligence or wilful misbehaviour of persons driving carriages thereon; it is enacted, that if the driver of any cart, car, dray, or waggon, shall ride upon any such carriage in any street or highway, not having some other person on foot or on horseback to guide the same (such carriages as are respectively drawn by one horse only, or by two horses abreast, and are conducted by some person holding the reins of such horse or horses, excepted); or if the driver of any carriage whatsoever, on any part of any street or highway, shall, by negligence or wilful misbehaviour, cause any hurt or damage to any person or carriage passing or being on such street or highway; or shall, by negligence or wilful misbehaviour, prevent, hinder, or interrupt the free passage of any other carriage, or of his majesty's subjects, on the said highways; or if the driver of any empty or unloaded waggon, cart, or other carriage, shall refuse or neglect to turn aside and make way for any coach, chariot, chaise, loaded waggon, cart, or other loaded carriage: he shall, on conviction by confession or oath of one witness before one justice where the offence shall be committed, forfeit not exceeding 10 s, in case such driver shall not be the owner of such carriage; and if he be the owner, then any sum not exceeding 20 s; or shall be committed to the house of correction,

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for any time not exceeding one month, at the discretion of such justice. And every such driver may, by authority of this act, and without any other warrant, be apprehended by any person who shall see such offence committed, and shall be immediately conveyed or delivered to a constable or other peace officer in order to be conveyed before a justice, to be dealt with according to law.

f. 43. [Note, there are provisions made to the like purposes, by a clause in the 27 G. 2. c. 16. f. 7. which being in effect superseded by this present act, are therefore here omitted. And it seemeth to have happened only by an oversight, that the said clause was not repealed amongst the other repeals in this act.]

IX. Direction posts to be set up.

The justices at their special sessions shall issue their precept to the surveyors, where several highways meet, and where there is no proper or sufficient direction post or stone already fixed or erected, requiring them forthwith to cause to be erected or fixed, in the most convenient place where such ways meet, a stone or post, with an inscription thereon, in large legible letters, containing the name or names of the next market town or towns, or other considerable place to which the said highways lead; and also, at the several approaches or entrances to such parts of any highways as are subject to deep or dangerous floods, graduated stones or posts, denoting the depth of water in the deepest part of the same; and likewise such direction posts or stones, as the said justices shall judge to be necessary, for the guiding of travellers in the best and safest tract thro' the said floods or waters. The said surveyors to be reimbursed by an assessment ordered by the justices at their special sessions in manner of the poor rate, in like sort as for purchasing materials as abovementioned. 7 G. 3. c. 42. f. 18, 21.

And if any surveyor shall, by the space of 3 months after such precept to him delivered, neglect or refuse to cause any such stone or post to be fixed as aforesaid; he shall forfeit 20 s. f. 18.

X. Penalty

X. Penalty of destroying blocks, posts, or battlements of bridges.

Whereas in some places it may be necessary to secure horse and foot causeways, by posts, blocks, or great stones, fixed in the ground, or by banks of earth cast up, or otherwise, from being broken up and spoiled with carriages; and forasmuch as divers evil disposed persons do wilfully or wantonly pull up, cut down, and remove the said posts, blocks, and great stones so fixed as afore-said, and also dig and cast down the said banks, whereby the said causeways are often ruined and destroyed; and such evil disposed persons may break, damage, or throw down the stones, bricks, or wood, fixed upon the parapets or battlements of bridges; and may pull down, destroy, obliterate, or deface any mile stone, or post graduated, or direction post or stone, erected or to be erected upon any highway: For prevention thereof, it is enacted, that every person who shall be guilty of any such offence, shall, upon complaint thereof made to one justice of the place where the same shall be proved to be done, by the oath of one witness, or upon view of the justice, forfeit not exceeding 5 l. nor less than 10 s. or be committed to the house of correction, there to be whipped and kept to hard labour for any time not exceeding one calendar month nor less than seven days, at the discretion of such justice. 7 G. 3. c. 42. s. 34.

XI. Breadth of wheels, and number of horses.

Whereas the highways, not being turnpike roads, are much prejudiced by the narrowness of the wheels of the several carriages travelling thereon, and by the excessive burdens loaded in such carriages; it is enacted, that no waggon, having the sole or bottom of the fellyes of the wheels of less breadth than 9 inches, shall go or be drawn with more than 6 horses; and no cart, having the sole or bottom of the fellyes of the wheels of less breadth than 9 inches, shall go or be drawn with more than 4 horses; and no waggon having the sole or bottom of the fellyes of the wheels of the breadth of 9 inches, shall go or be drawn with more than 8 horses; and no cart, having the sole or bottom of the fellyes of the wheels of the breadth of 9 inches, shall go or be drawn with more than 5 horses;

on pain, that the owner or driver shall forfeit all the horses above the number, with all geers, bridles, halters, and accoutrements, to the sole use and benefit of any person who shall seize or distrain the same. 7 G. 3. c. 42. s. 38.

Provided, that the regulations herein before mentioned concerning the number of horses and the wheels of carriages, shall not be construed to extend to carts, waggons, or other carriages, employed only in carrying any one stone, block of marble, cable rope, or piece of metal or timber; or to such ammunition as shall be for his majesty's service. 8 G. 3. c. 5.

Provided also, that any person who shall make seizure or distress, for any of the said forfeitures or penalties, shall deliver the horse, horses, or other things so seized or distrained, into the custody of the constable, headborough, tythingman, or some other officer, of the parish, township, or place where such distress or seizure is made, or of the next parish, township, or place (who shall receive into their custody and safely keep the same) till the person who made the seizure shall make proof upon oath before a justice, of the offence committed, which he shall make within 6 days after the seizure; or in default thereof, such horse or other thing shall be delivered to the owner, and the person making such seizure shall pay such reasonable charges to the constable or other officer, for the keeping and securing thereof, as the said justice shall direct. And the justice before whom such proof shall be made, shall issue his precept to such constable or other officer, immediately to deliver the horse, horses, or other things so forfeited, to the party who seized the same, to and for his own use and benefit; paying such reasonable charges for keeping and securing thereof, as the said justice shall direct. And every person making seizure, and not prosecuting within the time and in manner aforesaid, shall forfeit to the owner of such horse or other thing the sum of 40 s. s. 41.

H. 16 G. 2. K. and Thomas Sergison, esquire. An information was moved for against him, for not condemning a horse taken out of a team under the statute of the 5 G. c. 12. which required proof to be made before a justice, of the cause of forfeiture; and the party who seized tendering his own oath, the defendant scrupled to take it, or to determine the affair in the absence of the owner or driver. And by the court, they were both reasonable objections. Why is not the person who seized, and is to have

Highways in general:

have the benefit of the forfeiture, within the reason of excluding informers where there is a penalty? *Making proof* must mean *legal proof*. The other also is but natural justice: There are exceptions as to one stone, or one piece of timber, though drawn by ever so many horses; and ought not the owner to have an opportunity of shewing it? And the rule was discharged with costs. *Str.* 1181.

And for the better discovery of offenders, the owner of every waggon, wain, or cart, shall cause to be placed, written, or painted, upon some conspicuous part of his waggon, wain, or cart, before he shall use or drive the same on any publick highway, his christian and surname, and the place of his abode, in large legible letters, and continue the same thereupon, so long as such waggon or cart shall be used upon any such highway. And if any person shall neglect the same, or cause to be placed any false or fictitious name or place of abode, he shall forfeit 20 s. *f.* 42.

With respect particularly to the cities of London and Westminster and parts adjacent, it is enacted by the 6 G. c. 6. that no person in London and Westminster, or within 10 miles thereof, shall carry at any one load, in waggons or carts having their wheels shod with iron, more than 12 sacks of meal of 5 bushels each, nor more than 12 quarters of malt, nor more than 700 $\frac{1}{2}$ of bricks, nor more than one chalders of coals; on pain of forfeiting any one of the horses, with the geers, bridles, and halters therewith used, in such manner and to such uses, as by the 5 G. c. 12. (now repealed.)

And by the 18 G. 2. c. 33. The wheels of every cart, car, or dray, within the bills of mortality, shall be six inches broad in the felly, and not wrought about with iron, nor be drawn with above the number of three horses, after they are up the hills from the water side; on pain of 40 s. by warrant of one justice, by distress; and for want of distress, or non-payment in six days after demand, to be committed till paid: But this not to extend to any country cart or waggon, that shall bring any goods, or shall carry any goods half a mile beyond the paved streets of the said cities and places.

Also any person, within the said limits, using any cart, car, or dray, having the wheels full six inches broad, when worn, may have the same bound round with tire of iron, provided it be six inches broad, and made flat, and not set on with rose-headed nails.

XII. Widening

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XII. Widening of highways.

The surveyor shall make every cartway, leading to any market town, 20 feet wide at the least, if the ground between the fences will admit of it; and where horse caufeways are used, or shall be judged proper, they shall not be less than 3 feet in breadth. 7 G. 3. c. 42.

f. 11.

And where it shall appear, upon the view of two justices, that any highway between the fences is not of sufficient breadth; they shall have power to order the same to be widened, in such manner as they shall think fit; so that the said highway, when widened, shall not exceed 30 feet in breadth; and so as the said power do not extend to pull down any house or building, or to take away the ground of any garden, park, paddock, court, or yard.

f. 12.

And for the satisfaction of the person or persons, bodies politick or corporate, who are seised or possessed of, or interested, in their own right or in trust for any other, in the said ground that shall be laid into the highway; the surveyor under the direction and with the approbation of the said justices, shall have power to make an agreement with them, for the recompence to be made for such ground, and for the making a new ditch and fence on that side of the highway which shall be so widened, in proportion to their several interests; and also with any other persons who may be injured thereby, for the satisfaction to be made to them respectively. *id.*

And if the surveyor, under the direction and with the approbation of the said justices cannot agree with the said persons, or if they cannot be found, or shall refuse to treat, or to take such recompence as shall be offered to them respectively by the surveyor; then the surveyor may apply to the general quarter sessions, giving 6 days notice in writing to such person interested in the ground, or to his guardian, trustee, clerk, or agent, signifying an intention to apply to such quarter sessions for the purpose of taking such ground: And the justices there on proof of such notice, and on certificate in writing signed by the justices making such view as aforesaid, of their proceedings in the premises, shall impanel a jury of 12 disinterested men, out of the persons returned to serve as jurymen at such quarter sessions. And the said jury shall, upon their oaths, to the best of their judgment, assess the

Highways in general.

damages to be given, and recompence to be made, to the owners and others interested as aforesaid in the said ground, for their respective interests, as they shall think reasonable, not exceeding 30 years purchase for the clear yearly value of the ground so laid out; and likewise such recompence as they shall think reasonable, for the making of a new ditch and fence to that side of the highway that shall be so widened; and also satisfaction to any others, that may be otherwise injured thereby. And upon payment or tender of the money so to be awarded to the persons intitled to receive the same, or leaving it in the hands of the clerk of the peace, in case such persons cannot be found, or shall refuse to accept the same, for the use of the owner or of others interested in the said ground; the interest of such persons shall be devested out of them, and the same shall be esteemed and taken to be a publick highway to all intents and purposes. Saving nevertheless to the owner of such ground all mines, minerals, and fossils, lying under the same, which can be got without breaking the surface; and also all timber and wood growing upon such ground, to be fallen and taken by the owner within one month after such order made, or, in default thereof, to be fallen by the surveyor within the respective months aforesaid, and laid upon the land adjoining for the benefit of the owner. *id.*

And in case the jury shall deliver a verdict for more than hath been offered by the surveyor before such application to the quarter sessions; then the costs and expences attending the said several proceedings shall be born and paid by the surveyor, out of the money in his hands, or to be assessed by virtue of this act: But if the jury shall deliver a verdict for no more, or for less, than hath been so offered by the surveyor; then the said costs and expences shall be born and paid by the person or persons who so refused to accept the said recompence and satisfaction. *s. 13.*

And where there shall not be sufficient money in the hands of the surveyor for the purposes aforesaid; then the said two justices, in case of agreement, or the said quarter sessions after such verdict as aforesaid, shall order an assessment to be made, levied, and collected, upon all and every the occupiers of lands, tenements, and hereditaments, in the respective places where such highways shall lie; which, if not paid within 10 days after demand, shall be levied by the surveyor by distress: And the money, when collected, shall be employed and accounted

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counted for, according to the order of the said justices, or court of quarter sessions respectively, for the purposes aforesaid. Provided, that no such assessment to be made in any one year, shall exceed the rate of 6 d. in the pound, of the yearly value of the lands, tenements, and hereditaments so assessed. *f. 12.*

XIII. General assessment of 6 d. in the pound.

If upon application of the surveyor of any parish, township, or place, to the general or quarter sessions (notice being first given of such intended application at the church or chapel on some Sunday before), the justices shall be fully satisfied by proof upon oath, that the statute duty hath been performed, and the (composition) money expended, towards the repair of the highways as aforesaid; or shall be fully satisfied, that the common highways, bridges, causeways, streets, or pavements, belonging to such parish, township, or place, cannot be sufficiently amended and repaired, paved, cleansed, and supported, by the means herein before prescribed; in such case, an assessment upon all and every the occupiers of lands, tenements, and hereditaments within such parish, township, or place, may be made, levied, and collected by such person and persons, and allowed in such manner, as the said justices by their order at such sessions shall direct and appoint. And the money thereby raised, shall be employed and accounted for according to the order of the said justices, towards the amending, repairing, paving, cleansing, and supporting such highways, causeways, streets, pavements, and bridges, from time to time, as need shall require. Which said assessment shall, by warrant of one justice, be levied by distress, if not paid within 10 days after demand. *7 G. 3. c. 42. f. 29.*

Provided, that no such assessment to be made in any one year, shall exceed the rate of 6 d. in the pound, of the yearly value of the lands, tenements, and hereditaments so assessed. *f. 30.*

XIV. Penalty of hindring the execution.

If any person shall resist or make forcible opposition against any person employed in the due execution of this act;—or shall hinder or attempt to prevent or obstruct the seizing or distraining any horse hereby directed to be
forfeited

Highways in general.

forfeited for the offences herein before mentioned;—or make any rescue of cattle or other goods distrained by virtue of this act;—or if any constable, headborough, or tythingman shall refuse or neglect to execute or obey any warrant or precept granted by any justice in pursuance of this act;—he shall, on conviction before one justice, forfeit not exceeding 10 l. nor less than 40 s. to be paid to the surveyor where the offence was committed, to be laid out in the repair of the highway. And if he do not forthwith pay, or secure to be paid, the said forfeiture upon conviction; it shall be lawful for such justice to commit him to the common gaol or house of correction of the place where the offence was committed, for any time not exceeding 3 months, unless the forfeiture be sooner paid. 7 G. 3. c. 42. s. 46.

XV. Penalty of the surveyor for neglect of duty.

If any surveyor, after acceptance of the office shall neglect his duty in any thing required of him by this act, for which no particular penalty is imposed; he shall forfeit, not exceeding 5 l. nor less than 10 s. at the discretion of the justice or justices having jurisdiction therein. 7 G. 3. c. 42. s. 35.

And it shall be lawful for the said justices, or any two or more of them, upon complaint by any person upon oath, against any surveyor, for any neglect or default made in the performance of his duty required by this act, to summon the surveyor to appear before them, at such time and place as they shall appoint by such summons; and then and there to examine and inquire into the same upon oath, and to make such order for the enforcing of this act, as to them shall seem meet. s. 17.

XVI. Surveyor's account.

The surveyor shall diligently collect all the rates, forfeitures, penalties, and compositions; and shall keep a book wherein he shall enter an account of all such money as shall have come to his hands; and to whom and on what occasion he hath disposed of the same; and shall also enter in such book a list of all sums then remaining due and owing from any person, in respect of the payments, compositions, rates, assessments, penalties, or forfeitures; and also shall enter in the said book an account of all tools, materials, implements, and other things, provided for the repair of the highways, at the publick expence of such

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such parish, township, or place; and shall, at the aforesaid special sessions, to be held on the first Monday in October or within 15 days after, as aforesaid yearly, produce such book to the justices at such sessions, and then and there verify the several entries therein on oath before the said justices; and shall then, or within 14 days after such sessions, deliver the said book, together with all sums remaining in his hands, and likewise all tools, materials, implements, and other things as aforesaid, to his successor. And such successor shall collect all such sums due and owing as aforesaid, by all such ways, and means, as the preceding surveyor could or ought to have collected and received the same. And if such surveyor shall neglect to provide such book, or to make such entry therein, or to deliver the said book and such tools, materials, implements, and other things as aforesaid to his successor; he shall forfeit 5l: And if he shall make default in payment of the money so remaining in his hands; within the time, and according to the directions aforesaid; he shall forfeit double the value of such money. 7 G. 3. c. 42. s. 32.

And no person shall receive any fee for such oath or account; on pain of 10l.. s. 37.

XVII. Presentment or indictment of highways in general. (F)

1. All defects of repairs of highways shall be presented in the county where they lie, and not elsewhere. Indictment to be within the county.

2. And the indictment must shew, that the way is common to all the king's people; for which cause it hath been resolved, that an indictment for a nuisance to a highway, without adding that it is a highway, is naught. 1 Haw. 220. Must shew it to be a highway.

But it is not necessary to say it is a highway for this or that particular carriage; for if it is a common highway, it is a highway for all manner of things. *Cases in the time of lord Hardwicke.* 316.

3. It is safest in the indictment to shew both the place from which, and also the place to which the way supposed to be out of repair doth lead; yet exceptions for want of such certainty have sometimes been disallowed: However it seems certain, that there is no necessity to shew that a highway leads to a market town, because every highway leads from town to town. 1 Haw. 219. Must shew the places from and to which it leads.

Place where.

4. It is necessary in the indictment expressly to shew, in what place the nuisance complained of was done; for which cause an indictment for stopping a way at *D.* leading from *D.* to *C.* is not good, for it is impossible that a way leading from *D.* should be in *D.* and no other place is mentioned. 1 *Haw.* 219.

Need not name the inhabitants.

5. It is said, that a presentment that a highway in such a place is decayed, by the defaults of the inhabitants of such a town, is good, without naming any person in certainty. 1 *Haw.* 220.

Indictment against particular persons.

6. But it hath been adjudged, that an indictment against particular persons must specially charge them every one. 1 *Haw.* 220.

Must set forth how much is out of repair.

7. It ought also certainly to shew, to what part of the highway the nuisance did extend, as by shewing how many foot in breadth it contained, or otherwise the defendant will neither know of the certainty of the charge, against which he is to make his defence, neither will the court be able from the record to judge of the greatness of the offence, in order to assess a fine answerable thereunto; and it hath been resolved, that the place is not sufficiently ascertained by shewing, that it contained so many foot in length, and so many in breadth, by estimation. 1 *Haw.* 220.

Must set forth the fact clearly.

8. Also, the fact must be expressed in such proper terms, that it may clearly appear to the court to have been a nuisance; and for this cause it hath been resolved, that a presentment for *diverting* a highway is not good, because a highway cannot be diverted, but must always continue in the same place where it was, howsoever it may be *obstructed*, and a new way made in another place. 1 *Haw.* 220.

Persons indicted to have notice.

9. It seems to be implied in the construction of all penal statutes, that no one ought to be convicted of any offence against them without having notice of the accusation made against him, and an opportunity of defending himself. And therefore it seems certain, that generally no one ought to be punished for any of the abovementioned offences, without being called upon to answer for himself, and having liberty to traverse the matters alledged against him. 1 *Haw.* 219.

Plea.

10. Upon an indictment against a parish for not repairing, they can give nothing in evidence upon the plea of not guilty, but that the way is in repair; but if it be against a particular person, he may give evidence that others ought to repair it. 1 *Mod.* 112. *Comb.* 396.

And the defendants ought not to plead that they ought not to repair, without shewing who ought. 1 Haw. 220.

And Mr. *Hawkins* says, that if a particular person be bound to repair a highway, either by inclosure or by prescription, the parish cannot take advantage of it upon the plea of not guilty, but ought to set forth their discharge in a special plea. 1 Haw. 203.

And it is no excuse for the inhabitants of a parish, being indicted at common law, for not repairing the highways, that they have done all that is required of them by statute; for since these statutes are wholly in the affirmative, and made in aid of the common law, and to supply the defects thereof, they shall not be construed to abrogate any provision thereby made for these purposes. 1 Haw. 204. So that at all events, the parish may be compelled to make their ways good.

11. After conviction, or upon a demurrer, or confession, any one may take exceptions to such indictment or presentment in any court for the want of legal form; but the court in discretion will very rarely suffer a man to take such exceptions, before such conviction or confession, without a certificate and affidavit that the ways are in good repair. 1 Haw. 219.

12. And the defendants shall not be discharged by submitting to a fine, but a *distingas* shall go *in infinitum* till they repair. 1 Haw. 220.

XVIII. Presentment by a justice. (G.)

Every justice of assize, justice of the counties palatine, and of the great sessions in Wales, and justice of the peace, shall have authority, on his own view, and the justice of the peace upon information on oath given to him by any surveyor, to make presentment at their respective assizes, great sessions, or in the open general quarter sessions of the peace, of any highway, causeway, or bridge, not well and sufficiently repaired and amended; or of any other default or offence against the provision or intent of this statute. 7 G. 3. c. 42. s. 15.

And all defects in the repair thereof shall be presented in such jurisdiction where the same do lie, and not elsewhere. *id.*

And no such presentment, nor any indictment for any such default or offence shall be removed by certiorari or otherwise out of such jurisdiction, till such indictment or

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presentment be traversed and judgment thereupon given ; except where the duty or obligation of repairing may come in question. *id.*

And every such presentment made by any such justice of assize, counties palatine, great sessions, or of the peace, upon his own view, or upon such information having been given to such justice of the peace upon the oath of a surveyor as aforesaid, shall be as good, and of the same force and effect in law, as if the same had been presented and found by the oaths of 12 men. And for every such default or offence, the court may assess such fines as to them shall seem meet. Saving to every person affected by such presentment, his lawful traverse to the same, as well with respect to the fact of non-repair, as to the duty or obligation of repairing, as they might have had upon any indictment of the same, presented and found by the grand jury. *id.*

And the justices of the peace at their general quarter sessions, or the major part of them (such major part not being less than five), may, if they see just cause, direct the prosecution on such presentments as shall be made at the quarter sessions as aforesaid, to be carried on at the general expence of such county, division, or liberty, and to be paid out of the general rates within such jurisdiction. *id.*

XIX. Levying and application of fines and forfeitures.

Levying and application of fines.

1. No fine, issue, penalty, or forfeiture, for not repairing the highways, or not appearing to any indictment or presentment for not repairing the same, shall be returned into the exchequer or other court ; but shall be levied by, and paid into the hands of such persons residing in or near the parish, township, or place where the road shall lie, as the court imposing the same shall order and direct, to be applied towards the repair and amendment of such highways. 7 G. 3. c. 42. s. 31.

And if any fine, issue, penalty, or forfeiture, to be imposed on any such parish, township, or place, for not repairing the highways, or not appearing as aforesaid, shall be levied on any one or more of the inhabitants of such parish, township, or place ; such inhabitant may make his complaint to the justices, at their special sessions: And the said justices, or any two of them may, by their warrant cause a rate to be made in like manner as is herein

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before prescribed for levying the general assessment of 6 d. in the pound, for the reimbursing such inhabitant. Which rate so made, and confirmed by any two justices, shall be collected and levied by the surveyor; who shall, within one month after making and confirming the rate, collect, levy, and pay the same to such inhabitant. *id.*

2. All penalties and forfeitures by this act imposed, ^{Of forfeitures, before one justice,} for any offence against the same, and all costs and charges to be allowed and ordered by the authority of this act, the manner of levying and recovering of which is not herein otherwise particularly directed, shall be levied by distress, by warrant of one justice where the offence, neglect, or default shall happen, or such order for payment of costs or charges shall be made; which warrant such justice shall grant, on conviction of the offender by confession or oath of one witness, or upon order made as aforesaid. And the penalties, when so levied, shall be paid half to the informer, and half to the surveyor to be employed towards the repair of the highway, unless otherwise directed by this act. And if such distress cannot be found, and such penalties and forfeitures, or the said costs, and charges, shall not be forthwith paid; such justice shall commit the offender, or person liable to pay the same respectively, to the common gaol or house of correction of the place where the offence shall be committed or such order as aforesaid shall be made, for any time not exceeding three months, unless the said penalty, forfeiture, costs, or charges shall be sooner paid. And if such offender, or person liable or ordered to pay the same respectively, shall live out of the jurisdiction of such justice; any justice of the place where such person shall inhabit shall, on request to him made, and on a true copy of the conviction whereby such forfeiture or penalty was incurred, or of the order for payment of such costs or charges, being produced and proved before him by the oath of one witness, cause by his warrant such penalty or forfeiture, or such costs and charges, to be levied by distress; and if no sufficient distress can be had, shall commit such person to the common gaol or house of correction of such place, for the time and in the manner aforesaid. 7 G 3. c. 42. s. 47.

3. Or, the prosecutor or informer may, if he pleases, ^{Or by action at law.} sue for and recover any forfeiture or penalty imposed by this act, by action at law, in any of his majesty's courts of record, in manner following; that is to say, where any

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person shall be liable to such pecuniary penalty; the same may be sued for and recovered by action of debt, in which it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the sum of——being forfeited by an act passed in the 7th year of the reign of his present majesty, intituled, *An act to explain, amend, and reduce into one act of parliament, the several statutes now in being for the amendment and preservation of the publick highways of this kingdom; and for other purposes therein mentioned*: And where the penalty or forfeiture shall be of any horse or other goods,—by an action of trover, against the person liable to such penalty or forfeiture, in which the forfeiture shall be sufficient evidence of property to the plaintiff, and in which the value of such horse or other goods shall be given in damages, without any proof of seizure or demand: And the plaintiff, if he recover, shall have double costs. Provided, that there shall not be more than one recovery for the same offence; and that ten days notice in writing be given to the party offending, previous to the commencement of such action; and that the same be brought within one calender month after the offence. 7 G. 3. c. 42. f. 48.

Inhabitant may
be a witness.

4. Provided, that no conviction shall be had by virtue of this act, unless upon confession of the party accused, or oath of one witness; and that any inhabitant of any parish, township or place, in which the offence shall be committed, shall be deemed a competent witness, notwithstanding his being such inhabitant. 7 G. 3. c. 42. f. 49.

Power to administer an oath.

5. And it shall be lawful for any justice to administer an oath to any witness or other person, for the better discovering and executing of the several matters herein before directed to be examined, inquired into, or performed by such justice. 7 G. 3. c. 42. f. 50.

[In several acts of late years, giving jurisdiction to justices of the peace, this power of administering an oath is specified; which seems to imply, that the legislature thought such special designation needful. If it is needful, or if there is a doubt about it, a general clause in some act of parliament seemeth requisite, to give to the justices a power to administer an oath in all cases whatsoever concerning which they are to inquire, hear and determine; for without this, their jurisdiction must needs be extremely defective. If it is clear that they have this power already, such clauses in acts of parliament are su-

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6. Where any distress shall be made for any sum to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, for any default or want of form in any proceedings relating thereto ; nor shall the party distraining be deemed a trespasser *ab initio*, on account of any irregularity which shall be afterwards done by him ; but the person aggrieved by such irregularity may recover satisfaction for the special damage in an action on the case.

7 G. 3. c. 42. s. 51.

7. Provided, that no plaintiff shall recover in any action for any irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made before the action brought : And in case no such tender shall have been made, the defendant may, by leave of the court, before issue joined, pay into court such sum as he shall see fit ; whereupon such proceedings shall be had, as in other actions where the defendant is allowed to pay money into court. 7 G. 3. c. 42. s. 52.

XX. Appeal.

If any person shall think himself aggrieved by any thing done in pursuance of this act, for which no particular method of relief hath been already appointed ; he may appeal, within 4 months, to the general quarter sessions, giving 8 days notice in writing of his intention to bring such appeal, and of the matter thereof, to the justice or other person against whom the complaint shall be made ; and within 4 days after such notice, entering into recognizance before a justice, with one surety, conditioned to try such appeal at, and pay such costs as shall be awarded by the justices of such quarter sessions ; and every justice and other person, having received notice of such appeal, shall return all proceedings had before them respectively touching the matter of such appeal, to the said general quarter sessions, on pain of 5l. And the justices there, on proof of such notice, and of the entering into such recognizance, shall hear and determine such appeal in a summary way, and award such costs to either party as they shall think proper ; to be levied and recovered as herein before directed. Which determination shall be final and conclusive to all intents and purposes. And no proceeding on this act shall be quashed or vacated for

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want of form, or removed by certiorari, or any other process, except as herein before mentioned, into any of his majesty's courts of record at *Westminster*. 7 G. 3. c. 42. §. 53.

Provided, that no such appeal shall be made against any conviction for the forfeiture of any horse or other beast by virtue of this act, unless the person convicted shall, at the time of the conviction, give notice of his intention to appeal, and at the same time enter into recognizance with sufficient sureties to pay the value of such horse or other beast, in case the conviction shall be affirmed upon appeal: And on his giving such security, such horse or other beast shall be forthwith delivered to him. §. 54.

Horse or other beast] *Beast* is not mentioned before, but *horses* only. And by this it may seem, that the omitting the mention of *oxen or other beasts of draught* hath been an oversight. For as the act stands, a man may pass with as many oxen in a draught as he pleases.

XXI. Limitation of actions.

If any action shall be brought against any person, for any thing done in pursuance of this act; such action shall be commenced within three calendar months after the fact committed, and not afterwards; and shall be brought in the county, riding, division, city or liberty, where the person against whom the action shall be brought doth ordinarily reside, or in which the fact was committed, and not elsewhere; and the defendant may plead the general issue, and give this act and the special matter in evidence, and that the same was done in pursuance of this act. And if the same shall appear to have been so done, or if such action shall not be brought within the said limitation of time and place; the jury shall find for the defendant; or if the plaintiff be nonsuit, or discontinue, or judgment be given against him upon demurrer; the defendant shall have treble costs. 7 G. 3. c. 42. §. 55.

Note, There is a proviso that nothing herein shall alter the particular acts made for Kent, Sussex, and the city of Bristol.

II. Concerning turnpike roads in particular.

1. **I**N many of the acts for repairing turnpike roads, General qualification of trustees. there is a clause ascertaining the quantity of estate which a man shall be possessed of, in order to intitle him to act as trustee in the execution of such act: Where no such qualification is directed by any such particular act, it is generally provided by the 7 G. 3. c. 40. that in such case no person shall be qualified to act as a turnpike trustee in that part of Great Britain called England, unless he shall be in his own right, or in the right of his wife, in the actual possession or receipt of the rents and profits of lands, tenements or hereditaments, of the clear yearly value of 40 l. or possessed of or intitled to personal estate to the value of 800 l. or shall be heir apparent of a person possessed of an estate in land of the clear yearly value of 80 l. and unless he hath taken, or shall (not being such heir apparent) before he acts take and subscribe the oath following before two trustees, viz. *I A. B. do swear, that I truly and bona fide am, in my own right [or, in the right of my wife] in the actual possession and enjoyment, or receipt of the rents and profits of lands, tenements, or hereditaments of the clear yearly value of 40 l. [or, possessed of or intitled to a personal estate to the value of 800 l.]: So help me God.* And if any person shall act contrary hereto, he shall forfeit 50 l. to him who shall sue; and the proof shall lie on the person prosecuted, that he is qualified as above; otherwise he shall pay the said sum, without other proof or evidence on the part of the prosecutor; than that he hath acted as commissioner. *f. 34.*

2. No person who shall keep any victualling house, ale-house, or other house of publick entertainment, or who shall sell any wine, cyder, beer, ale, spirituous or strong liquors by retail, shall be capable of acting as a trustee, or of holding any place of trust or profit under the trustees of any turnpike act, or of farming the tolls granted thereby. *7 G. 3. c. 40. f. 36.*

Officers not to be alehouse-keepers.

3. Where a sufficient number of trustees shall not meet on the day appointed for the first meeting, or shall not meet on the day appointed by adjournment, or for want of a proper adjournment; so many trustees as shall meet, or if none be there, then the clerk shall cause notice to be affixed on all the turnpikes on the respective roads, or if

Meetings how to be sustained.

no turnpike be then erected, shall cause the like notice to be affixed in the most conspicuous place in one of the principal towns or places nearest to the said roads, at least 10 days before the intended meeting; appointing such trustees to meet at such place where the preceding meeting was appointed to have been held, or at the place directed for the first meeting, if no such preceding meeting shall have been held. 7 G. 3. c. 40. f. 39.

And no meeting shall be at any time adjourned for any longer time than three months. f. 40.

Hours of meeting.

4. No business shall be proceeded upon at any meeting, before the hour of ten in the forenoon; and no adjournment shall be made to any hour later than two in the afternoon. 7 G. 3. c. 40. f. 40.

Orders to be signed.

5. Every act agreed upon at any meeting, shall be signed at the said meeting by a competent number of trustees; otherwise every such meeting, adjournment, and act respectively shall be void. 7 G. 3. c. 40. f. 40.

Weighing engines to be erected.

6. It shall be lawful for the trustees or five of them, at a general meeting, if they think proper, at any gate, or on any part of the road, to order and cause to be erected a crane or engine, for weighing of carriages; and by writing signed by them, to order all such carriages which shall pass thro' any such gate, to be weighed, together with their loading. 7 G. 3. c. 40. f. 1.

Additional toll for over-weight.

7. And may take, over and above the toll, the sum of 20 s. for every hundred weight which every waggon or four wheeled carriage (not having the sole or bottom of the fellies of the wheels of the breadth of 9 inches) together with the loading thereof, shall weigh over and above the weight of 60 hundred.

And the like sum of 20 s. for every hundred weight which every waggon or four wheeled carriage, having the sole or bottom of the fellies of the wheels of the breadth of 9 inches, together with the loading thereof, shall weigh over and above the weight of 6 tons:

And the like sum of 20 s. for every hundred weight which every cart or two wheeled carriage, having the sole or bottom of the fellies of the wheels of the breadth of 9 inches, together with the loading thereof, shall weigh over and above the weight of 3 tons. 7 G. 3. c. 40. f. 1.

Diminution of tolls for carriages rolling 16 inches.

8. Provided, that the said regulations shall not extend to any waggons or wains having the axle trees thereof of such different lengths, that the distance from wheel to wheel of the narrower pair of the said wheels be not more than

than four feet two inches, to be measured at the ground; and that the distance from wheel to wheel of the other pair thereof be such, that the fore and hind wheels of such waggons and wains shall roll only one single surface of 16 inches wide at the least, on each side of the said waggons or wains; and having the fellies thereof of the breadth of 9 inches: but that the same shall pass upon any turnpike road, and thro' any toll gate within 100 miles from London, on paying only so much of the tolls as shall not exceed one half of the full toll payable for waggons and wains having 9 inch wheels, and not rolling a surface of 16 inches. 7 G. 3. c. 40. f. 2.

9. Provided also, that the said regulations shall not extend to any carriages employed only in husbandry, or carrying only manure for land, hay, straw, fodder, or corn unthreshed. 7 G. 3. c. 40. f. 3.

10. And the trustees, or two of them, may by writing under their hands order the fellies of all waggons, wains, carts, or other carriages, which ought to be of the breadth herein before prescribed, to be measured at any weighing engine or turnpike gate. 7 G. 3. c. 40. f. 4.

11. It shall not be lawful to make composition for tolls, for any waggon, wain, cart, or carriage, unless they have the fellies of the wheels of the breadth of 9 inches. 7 G. 3. c. 40. f. 5.

12. If any person shall unload any goods from any carriage, at or before they come to any turnpike gate or weighing engine; or shall lay upon such carriage, after the same shall have passed the gate or engine, any goods taken or unloaden from any horse, cart or other carriage, belonging to, or hired or borrowed by the same waggoner or carrier, in order to avoid the payment of the additional toll of 20 s. per hundred; he shall, on conviction before three trustees or one justice, on the oath of one witness, forfeit 5 l. to be levied upon the goods of the owner of such carriage: And every driver offending shall, on the like conviction, be committed to the house of correction for one month. And if any toll taker, at any gate where or near to which any crane or engine shall be erected, shall permit any loaden carriage as aforesaid to pass or repass thro' any such gate without weighing; he shall, on like conviction, be immediately discharged, and rendered incapable of holding any office under the trustees, or shall forfeit 5 l. at the option of such trustees. 7 G. 3. c. 40. f. 6.

13. No

Distances between the wheels not rolling .6 inches.

13. No waggon, wain, or cart, shall pass along any turnpike road, being above 20 miles from London or Westminster, having the fellies of the wheels of the breadth of 9 inches at the bottom, unless the same shall be made and constructed in such manner, that no pair of such wheels (except such as shall roll a surface of 16 inches) shall be wider than 4 feet 6 inches from inside to inside, to be measured from the ground; and that the distance from the centre of the fore wheel to the centre of the hind wheel, of any such waggon or four wheeled carriage, (not being used for the carriage of timber only), be not above 9 feet, to be measured from the centre of the axle-trees at the ends thereof; on pain of the owner forfeiting 5 l. And the surveyor or gatekeeper shall measure every such waggon, wain, or cart; and if any master or driver shall hinder or refuse to permit the same to be measured, he shall forfeit 5 l. and it shall not be lawful for such carriage not permitted to be measured to pass along any turnpike road. 7 G. 3. c. 40. f. 7.

Number of horses or other beasts of draught.

14. No waggon, wain, or other four wheeled carriage, having the sole or bottom of the fellies of the wheels of the breadth of 9 inches, shall pass or be drawn on any turnpike road with more than 8 horses; nor any cart or other two wheeled carriage, having wheels of the breadth aforesaid, shall pass or be drawn on any turnpike road with more than 5 horses; the horses in such respective carriages to be drawn in pairs except where there is an odd horse, and except where the number of horses shall not exceed four; and no waggon, wain, or other four wheeled carriage, having the fellies of the wheels of less breadth than 9 inches, shall pass or be drawn on any turnpike road with more than four horses, or six oxen or neat cattle in pairs and 2 horses, or 8 oxen or neat cattle in pairs and 1 horse; and no cart or other two wheeled carriage, having the fellies of the wheels of less breadth than 9 inches, shall pass or be drawn on any turnpike road with more than 3 horses, or 4 oxen or neat cattle in pairs and 2 horses, or 6 oxen or neat cattle in pairs and one horse; on pain of the owner of the carriage forfeiting 20 s. and every horse or other beast of draught above the number, to any person who shall seize or sue for the same. 7 G. 3. c. 40. f. 8.

Fraudulently taking off horses or altering wheels.

15. If any person shall take off or cause to be taken off any horse or other beast of draught, or alter or cause to be altered the distance of the wheels, before the same shall

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shall come to any turnpike gate, with intent to avoid any toll or penalty aforesaid; he shall, on conviction before three trustees or one justice, on the oath of one witness, forfeit 5 l. 7 G. 3. c. 40. s. 9.

And every person who shall drive any such carriage with more horses or beasts of draught, than such carriage shall on the same day have passed with thro' any turnpike gate, shall be deemed to have taken off the same with intent to avoid paying the toll. s. 10.

16. Provided, that if it shall appear to the trustees, or nine of them, at a publick meeting, that it is impracticable for any waggon or other four wheeled carriage, with the weights to the same respectively allowed as aforesaid, to be drawn up any hill by the number of horses herein before allowed, without manifest inconvenience and hazard; they may allow such number of horses as they shall judge necessary, not exceeding ten for 9 inch wheels, nor six for wheels of less breadth than 9 inches, for the purpose only of drawing up such hill; the length and extent of such hill to be specified in such order of allowance, and the termination at each end thereof to be marked by a post or stone to be erected at such respective boundaries: And the said order of allowance shall be certified by the said trustees or their clerk to the next sessions of the place where such hill shall be; and if the facts, upon which the same is founded, shall be proved upon the oath of two witnesses to the satisfaction of the court, the said order shall be confirmed and filed amongst the records, or otherwise shall be quashed. 7 G. 3. c. 40. s. 11.

Exception of drawing up steep hills.

17. Provided also, that if it shall appear, upon the oaths of credible witnesses, to the satisfaction of any justice or justices, trustees, or of any court of justice authorised to enforce the execution of this act, that any waggon, cart, or carriage could not, by reason of deep snow or ice, be drawn with the respective weights and by the number of horses or beasts of draught hereby respectively allowed; in such case, the said justice or justices, trustees, or court, shall stop all proceedings before them for the recovery of any forfeiture incurred by drawing [with] a greater number. 7 G. 3. c. 40. s. 12.

Exception of snow or ice.

18. And whereas great damage is done to turnpike roads, by waggons and four wheeled carriages drawn by horses in pairs; therefore it shall not be lawful for any waggon or four wheeled carriage, having the bottom of the fellics of the wheels of less breadth than 9 inches, to pass

Narrow wheeled waggons not to be drawn by horses in pairs.

pass upon any turnpike road, or through any turnpike gate, if the same be drawn by horses in pairs (other than and except waggons and four wheeled carriages loaden with fish, rabbits, poultry, calves alive or slaughtered, or lambs only). 7 G. 3. c. 40. f. 13.

Carriages turned out of the road.

19. No waggon, cart, or other carriage travelling on any turnpike road, shall be driven or turned out of the same into any of the roads adjacent not being turnpike roads, in order to avoid and thereby avoiding the toll; on pain of forfeiting any one of the horses not being the thill or shaft horse, with all his geers and accoutrements, to him who shall seize and distrain the same. 7 G. 3. c. 40. f. 14.

Gatekeepers required to prosecute.

20. If any gatekeeper shall suffer any carriage to pass thro' the gate, or to pass on the road within his view or knowledge, with a greater number of horses, oxen, or neat cattle, or with any carriage constructed or drawn in any other manner than is before directed, and shall not within one week proceed for recovery of the penalty; he shall forfeit 40 s. 7 G. 3. c. 40. f. 15.

Driver offending.

21. And if any person shall drive or act as driver of any carriage drawn by more than the number of horses, oxen, or neat cattle above limited, or having wheels of a construction not authorised by this act; any constable, surveyor, or any other person, may apprehend or cause him to be apprehended and carried before a justice; and on conviction before such justice, by confession, or oath of one witness, he shall forfeit 5 l. 7 G. 3. c. 40. f. 16.

Drag iron, form thereof.

22. Where any drag iron or other instrument shall be affixed under the sole of the wheel or wheels of any waggon or other carriage, to make the passage more easy down steep hills; such drag iron or instrument shall be flat at the bottom or sole thereof, and shall not be of less breadth than the fellyes of the wheels under which it shall be affixed; on pain of the owner of such carriage forfeiting 40 s. 7 G. 3. c. 40. f. 17.

What inscription shall be on the waggon.

23. Every owner of any waggon, wain, cart, or carriage, shall cause to be painted, in large and legible characters, upon the tilts of every such carriage which hath a tilt, otherwise upon the most conspicuous part thereof, before he shall use or drive the same on any turnpike road, his christian and surname and place of abode; and if he shall by himself or his servant travel with or use such carriage without such name and place so painted thereon, or if he shall paint or cause to be painted

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painted thereon, or if he shall paint or cause to be painted any false or fictitious name thereon, he shall forfeit 5*l.* 7*G.* 3. *c.* 40. *f.* 18.

And every owner of any common stage waggon or cart shall, over and above his christian and surname, cause to be painted on the part and in manner aforesaid, the following words, COMMON STAGE WAGGON, or CART, as the case shall be; and if he shall by himself or his servant travel with or use the same, without having the said words painted thereon, he shall forfeit 40*s.* *id.*

24. Whereas by several particular acts, high and extraordinary tolls are directed to be paid for carriages drawn by more than a certain number of horses or beasts of draught, with an intent in effect to prohibit the passage of such carriages, and thereby the better to preserve the roads; it is enacted, that the trustees of the said roads, or 5 of them, shall, at their first meeting after the commencement of this act, lessen the said high and extraordinary tolls, in respect of waggons or other wheel carriages having wheels of the breadth of 9 inches, in such manner, as no greater toll, in respect of waggons, be taken, than is directed by the said acts for waggons, and other four wheeled carriages drawn by four horses or beasts of draught; and that no greater toll, in respect of carts having 9 inch wheels, be taken, than is directed by the said acts for carts drawn by three horses: And they shall give directions to their collectors accordingly. 7*G.* 3. *c.* 40. *f.* 19.

Diminution of tolls in favour of broad wheels.

25. And the trustees of every turnpike road, shall take for every waggon, wain, cart, or carriage, having the fellies of the wheels of less breadth than 9 inches, one half more than the tolls payable for the same by any particular act made or to be made, before such carriage shall be permitted to pass thro' the turnpike gate. 7*G.* 3. *c.* 40. *f.* 20.

Tolls raised in respect of narrow wheels.

Provided, that it shall be lawful for any cart or carriage, drawn by two horses or four oxen and no more, having the fellies of the wheels of the breadth of 6 inches, to pass, paying the toll required by any such act. *f.* 21.

26. And whereas there are or may be in several acts exemptions allowed from payment of tolls in particular cases, and liberties allowed to pay less tolls for carriages carrying some particular kinds of goods than are charged upon other carriages of the like nature carrying other goods;

Particular exemptions restricted to broad wheels.

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Highways, turnpike.

it is enacted, that no person shall have the benefit of such exemption or liberty, unless such waggon, wain, cart, or carriage have the bottom of the fellies of the wheels of the breadth of 9 inches as aforesaid: other than and except carts and carriages drawn by 2 horses or 4 oxen, and no more, having the bottom of the fellies of the wheels of the breadth of 6 inches; and except carts and carriages employed in carrying corn or grain in the straw, hay, fodder, dung, lime for the improvement of land, or other manure, or any implements of husbandry only. 7 G. 3. c. 40. f. 22.

Exception of particular carriages.

27. Provided always, that nothing in this act shall extend to any chaise marine, coach, landau, berlin, chariot, chaise, calash, or herse; or to any caravan, or covered carriage, of any nobleman or gentleman for his private use; or to such ammunition or artillery as shall be for his majesty's service; or to any cart or carriage drawn by one horse, or two oxen, and no more; or to any carriage having 9 inch wheels which shall be laden with one stone, block of marble, one piece of metal, or one piece of timber. 7 G. 3. c. 40. f. 23.

Taking benefit of exemptions fraudulently.

28. If any person shall take the benefit of any exemptions under this or any other turnpike act, in any fraudulent or collusive manner; he shall forfeit, not exceeding 5 l. nor less than 40 s. 7 G. 3. c. 40. f. 24.

Power to lessen the tolls, in what case.

29. Whereas by several acts now in force, there is no power given to the trustees to lessen the tolls, altho' the roads may be sufficiently or in a great degree amended; it shall be lawful for the trustees, or 13 of them, at a meeting to be held for that purpose, of which one calendar month's notice shall be given in writing, to be affixed on all the turnpike gates, from time to time, to lessen the tolls during such time as they shall think proper; and afterwards, at such meeting, from time to time, as they shall see occasion, to advance the said tolls, to any sum not exceeding the rates granted by such acts respectively. 7 G. 3. c. 40. f. 25.

Provided, that where the whole money borrowed on the credit of the tolls shall not be paid; such tolls shall not be lessened without the consent of the person or persons intitled to five sixths of the money remaining due. f. 26.

Proportioning of statute duty.

30. Where there are two or more turnpike roads under several acts, within the same parish, township or place, and the statute duty directed by such acts to be applied to the turnpike roads shall exceed 3 days duty in

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the whole; two justices at a special sessions (having first summoned the clerks and surveyors of such turnpike roads, and the surveyors of the highways for such parish, township, or place) shall adjust and proportion such statute duty betwixt such turnpike roads and the other highways, as they shall think reasonable. 7 G. 3. c. 40. f. 27.

31. If the surveyor shall suffer to remain for 48 hours, within 12 feet on either side of the middle of the road, any post, heap of stones, rubbish, or earth, by which the passage shall be obstructed or straitened, (except posts, blocks, stones, or banks of earth, fixed or raised for securing horse or foot roads, and also direction posts and stones;) he shall forfeit 40 s. to be recovered before one justice. 7 G. 3. c. 40. f. 28. Obstructions.

32. If any person shall make or cause to be made any hedge, ditch, or other fence, on any turnpike road, not inclosed on both sides, within 30 feet from the middle whereof; or shall plough, harrow, or break up the soil, or in ploughing or harrowing shall turn the plough or harrow, upon any ground within 15 feet from the middle of the road: he shall forfeit 40 s. to such person who shall make information: And the trustees, or 5 of them, may cause such hedge, ditch, or fence to be taken down or filled up, at the expence of the person to whom the same shall belong. And one justice, on proof to him made upon oath, may levy as well the expences of taking down such hedges, as the penalties, by distress. 7 G. 3. c. 40. f. 29. Fencing or ploughing too near the road.

33. The trustees shall direct the surveyor of any turnpike road, where several highways meet, and there is no sufficient direction post already fixed, forthwith to cause to be erected a stone or post, with an inscription thereon in large letters, containing the name of and distance from the next market town or towns, or other considerable place or places, to which the said highways lead; and also, at the several approaches to such parts of any highways as are subject to deep or dangerous floods graduated stones or posts, denoting the depth of water in the deepest part; and likewise such direction posts or stones as the said trustees shall judge necessary for the guiding of travellers in the best and safest tract thro' the said floods or waters; and also shall order the said surveyor to erect mile stones upon such turnpike road, with proper inscriptions, denoting the names and distances from the principal towns or places on each respective road: The Direction posts and mile stones to be set up.

expences thereof to be paid out of the tolls. And if the surveyor shall neglect to do the same for the space of 3 months, he shall forfeit 20 s. 7 G. 3. c. 40. f. 30.

Demolishing direction posts, mile stones, blocks, and battlements of bridges.

34. If any person shall pull up, cut down, and remove any posts, blocks, or great stones, or dig and cast down any banks of earth, fixed or cast up for securing any horse or foot causeway; or shall break, damage, or throw down the stones, bricks, or wood, fixed upon the parapets or battlements of bridges; or shall pull down or obliterate any mile stone, or post graduated, or direction post or stone; he shall, on conviction before one justice, by the oath of one witness, or upon view of the justice himself, forfeit not exceeding 5 l. nor less than 10 s. or be committed to the house of correction, to be whipped and kept to hard labour for any time not exceeding one calendar month, nor less than 7 days, at the discretion of such justice. 7 G. 3. c. 40. f. 31.

Demolishing houses, gates, bars, cranes.

35. If any person shall, either by day or night, wilfully or maliciously pull down, pluck up, throw down, level, or otherwise destroy, any turnpike gate, post, rail, wall, chain, bar, or other fence, belonging to any turnpike gate, or any other chain, bar, or fence set up or erected to prevent passengers from passing by without paying toll; or any house erected for the use of such turnpike gate; or any crane, machine, or engine erected on any turnpike road by authority of parliament for weighing waggons, carts, or carriages; or shall forcibly rescue any person in custody for such offence; he shall be guilty of felony without benefit of clergy: And he may be tried in any adjacent county in England. 7 G. 3. c. 40. f. 32. And the hundred shall answer damages as in cases of robbery. f. 33.

Toll gate unlawfully erected.

36. If the trustees shall erect or continue any turnpike gate, where they have not power so to do; the justices in sessions, on complaint thereof, may determine the same in a summary way, and order the sheriff to remove such gate. 7 G. 3. c. 40. f. 41.

Nuances prosecuted out of the tolls.

37. The trustees, or five of them, at a general meeting, may, if they think fit, direct prosecution by indictment, for any nuisance upon the turnpike road, at the expence of the tolls; provided that evidence can be had by confession of the offender or oath of one witness, and not otherwise. 7 G. 3. c. 40. f. 37.

Gatekeeper and surveyor to account.

38. The gatekeeper and surveyor shall, when required by notice in writing from the trustees or 5 of them, render upon oath (to be taken before a justice or trustee) a true and exact account in writing to the said trustees, or to

to any person named by them in such notice, of all money received by them on account of the road, not before accounted for; on pain of 5 l. on conviction before one justice, to the use of the road. 7 G. 3. c. 40. s. 45.

39. No gatekeeper or person renting the tolls, and residing in the toll house, shall be removeable to his settlement, unless he become actually chargeable; nor shall by renting the tolls and residing in such house gain a settlement: And no person, in respect of such tolls or toll house, shall be rateable to the poor or other publick or parochial levy. 7 G. 3. c. 40. s. 46.

Gatekeeper privileged as to settlement and taxes.

40. On the death of a gatekeeper, two trustees may appoint another until the next meeting: And if his wife or family shall refuse to deliver up possession within 4 days after such new appointment; or if any gatekeeper, being discharged from his office by the trustees, shall refuse to deliver up possession within 2 days after notice of his discharge; in either of the said cases, one justice by his warrant may order the constable, with such assistance as shall be necessary, to enter in the day time, and remove the persons and their goods, and put the new officer into possession. 7 G. 3. c. 40. s. 44.

Gatekeeper dying or discharged.

41. All clerks, treasurers, surveyors, and other officers, and their executors or administrators respectively shall, within 10 days after notice in writing given to them by the trustees or 5 of them at a meeting, produce and deliver up to such trustees, all books, accounts, papers, or writings relating to the execution of their offices, which shall be in their custody or power; on pain of 20 l. 7 G. 3. c. 40. s. 35.

Officers to deliver up books.

42. Any mortgagee that shall have taken possession of any toll gate shall, within 14 days after notice in writing from the trustees or 5 of them, render upon oath (to be administered by a justice or trustee) an exact account in writing to such trustees or any person by them named in such notice, of all money received by him or by any other to his use or by his authority, at such toll gate, and what he hath expended in keeping the same; on pain of forfeiting 10 l. to the said trustees, to be recovered by them or their clerk in a summary manner before one justice, and to be applied to the use of the road. 7 G. 3. c. 40. s. 42.

Mortgages to account.

And if he shall keep possession after he hath received the full sum due upon his mortgage, and the interest thereof, with costs; he shall forfeit to the said trustees, for the use of the road as aforesaid, double the sum he

shall have received over and above the sum due to him as aforesaid, with treble costs: to be recovered by the said trustees or their clerk in any of his majesty's courts of record. *f. 43.*

Penalty of officers for neglect of duty.

43. Every constable refusing or neglecting to put this act in execution, or to account for and deliver any forfeiture or penalty; and every surveyor, toll-gatherer, and all persons employed by the trustees who receive salaries, who shall wilfully neglect for one week after the offence committed to seize any supernumerary horse, or to lay information upon oath before a justice or trustees respectively at their meeting, as by this act is directed; shall, on conviction before one justice, on the oath of one witness, forfeit 10 l. *7 G. 3 c. 40. f. 47.*

General penalty for obstructing the execution.

44. If any person shall resist, or make forcible opposition against any person employed in the execution of this act; or shall assault the collector of tolls in the execution of his office; or shall forcibly pass thro' any gate, rail, chain, or other fence, without paying the toll; or shall hinder or attempt to prevent any person in the measuring of wheels, or in seizing or distraining any horse or beast of draught; or make any rescue of cattle or other goods distrained; or if any constable shall refuse or neglect to execute any warrant of any justice or trustees, pursuant to the directions of this or any turnpike act; he shall, on conviction before one justice, on the oath of one witness, forfeit not exceeding 10 l. nor less than 40 s. to the surveyor for the use of the road: and if not forthwith paid, or secured to be paid, upon conviction; such justice shall commit him to the common gaol or house of correction, for any time not exceeding 3 months, unless the forfeiture shall be sooner paid. *7 G. 3. c. 40. f. 50.*

Seizures how to be made and prosecuted.

45. Every person who shall make any seizure or distress, of any horse, beast, geers, or other things as aforesaid, unless by warrant from a justice or the trustees respectively, shall deliver the same into the custody of the constable or some other parish officer of the same or of the next or adjacent town or parish where the distress was made; who shall receive into their custody and safely keep the same, till the person who made the distress shall make proof upon oath before a justice of the offence committed; and the said justice before whom such proof shall be made, shall after conviction issue his precept to such constable or parish officer, immediately to deliver the horse, beast, geers, or other things so forfeited, to the party who seized or distrained the same, for his own

use and benefit; paying such reasonable charges for keeping and securing the same, as the said justice shall allow. 7 G. 3. c. 40. s. 48.

But if proof shall not be made before such justice, within 6 days after such delivery to the officer; then such horse, beast, geers, or other things shall be restored to the owner; and the person making such seizure shall forfeit to the owner 40s.; and shall pay to such officer for keeping and securing the distress, such reasonable charges as the said justice shall allow. *id.*

46. All penalties and forfeitures by this act imposed, and all costs and charges to be allowed by the authority thereof, the manner of levying and recovery of which is not hereby otherwise particularly directed, shall be levied by distress by warrant of one justice where the offence shall be committed or such order for payment of costs and charges shall be made: which warrant such justice shall grant, on conviction of the offender by confession or oath of one witness, or upon order made as aforesaid. 7 G. 3. c. 40. s. 51.

Recovery of penalties and application thereof.

And any justice may act in the execution of this act, notwithstanding he may be a trustee. s. 49.

And any inhabitant of the parish, township, or place, where the offence shall be committed may be a witness. *id.*

And to prevent fraudulent prosecutions and seizures, the justice before whom any information shall be brought, shall, where any prior seizure, information, or conviction shall be set up, examine into the real merits thereof; and if it shall appear, that the same was not done or prosecuted effectually to recover and apply the penalty or forfeiture for the real ends and purposes of the act, but to favour the offender, such prior seizure, information, or conviction shall be deemed to be fraudulent and void; and the said justice shall proceed to determine and convict as if no such prior proceedings had been made. s. 38.

And if such distress as aforesaid cannot be found, and the said penalties and forfeitures or the said costs and charges shall not be forthwith paid; the justice shall commit the offender, or person liable as aforesaid, to the common gaol or house of correction of the place where the offence shall be committed or such order shall be made, for any time not exceeding 3 months, unless the said penalty, forfeiture, costs, or charges shall be sooner paid. And if such person shall live out of the

jurisdiction of the justice, any justice of the place where such person shall inhabit, on request to him made, and on a true copy of the conviction or order as aforesaid proved before him upon oath, shall by his warrant cause the said sums to be levied as aforesaid; and if no sufficient distress can be had, shall commit such offender or person liable as aforesaid, to the common gaol or house of correction, for the time, and in the manner aforesaid.

f. 51.

And the penalties and forfeitures, when levied, shall be paid half to the informer, and half to the surveyor for the repair of the road, unless otherwise directed by this act. Provided, that where the same shall be recovered on the information of the surveyor, toll taker, or other person having any salary from the trustees; the said penalties and forfeitures shall be wholly applied for the repair of the road. *f. 51, 52.*

And every prosecutor or informer may, at his election, sue for and recover any forfeiture or penalty imposed by this or any other act made or to be made for repairing turnpike roads, in the same manner as such forfeitures and penalties are directed to be sued for and recovered by such acts, or by action at law in any of his majesty's courts of record, in manner following; that is to say, Where any person shall be liable to any pecuniary penalty, the same may be recovered by action of debt; in which, it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the sum of — being forfeited by an act passed in the 7th year of the reign of his present majesty, intituled, *An act to explain, amend, and reduce into one act of parliament, the general laws now in being for regulating the turnpike roads of this kingdom, and for other purposes therein mentioned*: And where the penalty or forfeiture is of any horse or beast of draught, or other goods, — by an action of trover; in which, the forfeiture shall be sufficient evidence of property to the plaintiff; and in which, the value of such horse, beast of draught, or other goods, shall be given in damages, without any proof of seizure or demand. And the plaintiff, if he recover, shall have full costs. — Provided, that there shall not be more than one recovery for the same offence; and that 10 days notice in writing be given to the party offending; and that the action be brought within one calendar month after the offence committed. *f. 53.*

47. Where

47. Where any distress shall be made, the same shall not be unlawful, nor the party distraining a trespasser, on account of any defect or want of form in the proceedings; nor shall the party distraining be deemed a trespasser *ab initio*, on account of any irregularity which shall be afterwards done by the party distraining: but the person aggrieved may recover satisfaction in a special action on the case. 7 G. 3. c. 40. s. 54. Irregularity in the proceedings.

48. And no plaintiff shall recover in any action for such irregularity, if tender of sufficient amends shall be made before the action brought: And if no such tender shall have been made, the defendant, by leave of the court, at any time before issue joined, may pay into court such sum as he shall see fit; whereupon such proceedings shall be had, as in other actions where the defendant is allowed to pay money into court. 7 G. 3. c. 40. s. 55. Tender of amends.

49. If any person shall think himself aggrieved, by any thing done by any justice or trustees in pursuance of this act, for which no particular method of relief hath been already appointed; he may appeal to any general quarter sessions to be held within 6 months after the cause of the complaint shall have arisen: giving 8 days notice in writing to such justice or trustees, of his intention to bring such appeal, and of the matter thereof; and within 4 days after notice, entering into recognizance before a justice, with one surety, conditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded by the justices of such quarter sessions. And every justice, and the said trustees, having received such notice, shall return all proceedings before them touching the matter of such appeal, to the said sessions; on pain of 5 l. And the said justices at such sessions, on proof of such notice being given, and of the entering into such recognizance, shall determine the cause in a summary way, and award costs to either party as they shall think proper, to be recovered as herein before directed. And the determination of such sessions shall be final. And no proceeding to be had in pursuance of this act shall be quashed for want of form, or removed by certiorari or any other process into any of his majesty's courts of record at Westminster. 7 G. 3. c. 40. s. 56. Appeal.

Provided, that no such appeal shall be made against any conviction for the forfeiture of any horse or other beast by virtue of this act, unless the person convicted shall, at the time of the conviction, give notice of his

intention to appeal; and at the same time enter into recognizance, with sufficient sureties, to pay the value of such horse or other beast, in case the conviction shall be affirmed upon appeal: And on his giving such security, such horse or other beast shall be forthwith delivered to him. *f. 57.*

Power to administer an oath.

Limitation of actions.

50. Where any oath is hereby directed to be made; the justices or trustees respectively shall have power to administer the same. *7 G. 3. c. 40. f. 58.*

51. If any action shall be commenced against any person, for any thing done in pursuance of this act; the same shall be commenced within 3 calendar months after the fact committed; and shall be brought in the county or place where the defendant doth ordinarily inhabit, or where the fact was committed; and the defendant may plead the general issue, and give this act and the special matter in evidence, and that the same was done in pursuance of this act. And if the same shall appear to have been so done, or such action shall be brought after the time or in other place than as aforesaid, the jury shall find for the defendant; or if the plaintiff be nonsuit, or discontinue, or upon demurrer judgment shall be given against him, the defendant shall have treble costs. *7 G. 3. c. 40. f. 60.*

A. Warrant for returning new surveyors.

Westmorland. } To Edward Cooke, gentleman, high constable of Lonsdale ward within the said county.

BY virtue of the statute in that behalf made, we ——— of his majesty's justices of the peace for the said county, do hereby require you forthwith to issue your warrants to all the petty constables within your said ward, in the form or to the effect following; that is to say,

Westmorland, } To the constable of ———
Lonsdale ward.

BY virtue of a precept from his majesty's justices of the peace for the said county to me directed, you are hereby required to give notice to the churchwardens, surveyors of the highways, and other householders within your township, assessed to any parochial or publick rate, that they do assemble, together with

with you the said constable, at the church or chapel, or if there be no church or chapel, then at the usual place of publick meetings within your township, on the — day of this present month of September, at the hour of eleven in the forenoon, and make a list of the names of ten persons living within your township, who each of them have an estate in lands, tenements, or hereditaments, lying within your township, in their own right, or in the right of their wives, of the yearly value of 10 l. or a personal estate of the value of 100 l. or are occupiers or tenants of houses, lands, tenements, or hereditaments of the yearly value of 30 l. ; and if there be not ten persons having such qualification, that then they insert in such list the names of so many as are so qualified, together with the names of so many of the most sufficient and able inhabitants not so qualified, as shall make up the number ten, if so many can be found ; if not, then so many as shall be there resident : With which said list you are to appear before the said justices, at their special sessions to be holden at — in the said county, on the — day of October now next ensuing, at the hour of — in the forenoon of the same day ; that out of the said list, the said justices then and there may nominate and appoint such persons to be surveyors of the highways within your said township, for the year then next ensuing, as they the said justices shall think fit and approve of. And within three days after making the aforesaid list, you are to give personal notice to, or cause notice in writing to be left at the place of abode of the several persons contained in the said list, informing them of their being so named, to the intent that they may appear (if they so think fit) before the said justices at the said special sessions, to accept the said office if they shall be appointed thereto, or to shew cause if they have any against their being appointed. And you are likewise to give notice to the present surveyors, that they do appear at the same time and place, and give an account upon oath before the said justices of their receipts and disbursements, and other matters relating to their office. Given under my hand at Hall Beck in the said county, the — day of —

Edward Cooke,
High Constable.

And this you the said high constable are in no wise to omit, on the peril that shall ensue thereof. Given under our hands and seals, the — day of — in the — year of the reign of —

B. Appointment

B. Appointment of the surveyor.

Westmorland, } At a special sessions of the peace for the
Lonsdale ward. } said county held at — in the county
aforesaid, the — day of October in the year —
by and before us whose names are hereunto set and seals
affixed, justices assigned to keep the peace of our lord the
king in the said county :

WE the said justices do hereby nominate and appoint A. S.
of the township of — in the said county, yeoman,
to be surveyor of the highways for the said township, for the
year ensuing. Given under our hands and seals the day and
year aforesaid.

If a special surveyor is appointed, then,

WE the said justices do hereby nominate and appoint A. S.
of the township of — in the said county, yeoman, to
be surveyor of the highways for the said township for the year
ensuing ; and do allow to him the salary of — for his trouble
therein. Given, &c.

C. Information of the default of labourers.

Westmorland. } **B**E it remembred, that this — day
of — A. S. surveyor of the high-
ways for the township of — in the said county, complaineth
and maketh oath, before me J. P. esquire, one of his majesty's
justices of the peace for the said county, that A. O. of the
township of — aforesaid, in the county aforesaid, yeoman,
keeping a team, draught, or plough in the said township,
was duly summoned by him the said A. S. to find and send on
the — day of — now last past, for the amending
the highways in the said township, one wain, cart, or car-
riage, furnished after the custom of the country, with
oxen, horses, or other cattle, and all other necessities
meet to carry things convenient for that purpose, and
also two able men with the same ; but that he the said
A. O. his duty in that behalf not regarding, did neglect and
make default, and did not find and send one wain, cart,
or

Highways.

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or carriage furnished as aforesaid with two able men as aforesaid.

A. S.

Before me
J. P.

D. Summons on the foregoing information;

Westmorland. } To the constable of—

WHEREAS complaint upon oath hath this day been made, before me J. P. esquire, one of his majesty's justices of the peace for the said county, by A. S. surveyor of the highways for the township of — in the said county, that A. O. of the township of — aforesaid in the county aforesaid, yeoman, keeping a team, draught, or plough in the said township, was duly summoned by him the said A. S. to find and send, on the — day of — now last past, for the amending the highways in the said township, one wain, cart, or carriage, furnished after the custom of the country, with oxen, horses, or other cattle, and all other necessities meet to carry things convenient for that purpose, and also two able men with the same; but that he the said A. O. did neglect and make default, and did not find and send, one wain, cart, or carriage furnished as aforesaid, with two able men as aforesaid, on the said — day of — for the amending the said highways as aforesaid: These are therefore to command you forthwith to summon the said A. O. to appear before me at — in the said county, on the — day of — at the hour of — to answer unto the said complaint. And be you then there to certify what you shall have done in the execution hereof. Herein fail you not. Given under my hand and seal the — day of — in the year —

E. Warrant of distress thereupon.

Westmorland. } To the constable of —

FORASMUCH as A. O. of the township of — in the county aforesaid, yeoman, is convicted before me J. P. esquire, one of his majesty's justices of the peace for the said county, for that he the said A. O. keeping a team, draught, or

Highways.

or plough in the said township, was duly summoned by A. S. surveyor of the highways for the township of ——— aforesaid, to find and send, on the ——— day of ——— now last past, for the amending the highways in the said township, one wain, cart, or carriage, furnished after the custom of the country, with oxen, horses, or other cattle, and all other necessities meet to carry things convenient for that purpose, and also two able men with the same; and that he the said A. O. did neglect and make default, and did not find and send, one wain, cart, or carriage furnished as aforesaid, with two able men as aforesaid, on the said ——— day of ——— for the amending the said highways as aforesaid, whereby he hath forfeited the sum of ——— These are therefore, in his said majesty's name, to command you to levy the said sum by distress of the goods of him the said A. O. And if within the space of [five] days next after such distress by you taken, the said sum of ——— together with reasonable charges of taking and keeping the said distress shall not be paid; that then you do sell the said goods so by you distrained, and out of the money arising by such sale, that you do pay the said sum of ——— to him the said A. S. to be by him employed for and towards the repairing of the highways in the township aforesaid; returning to him the said A. O. the overplus upon demand, the reasonable charges of taking, keeping, and selling, the said distress being first deducted. Herein fail you not. Given under my hand and seal, the ——— day of ——— in the year ———

If he occupies 50 l. a year or upwards, then the forms must be varied accordingly; ——— that A. O. of the township aforesaid in the county aforesaid, yeoman, occupying lands, tenements and hereditaments within the said township of the yearly value of ——— pounds, was duly summoned by him the said A. S. to find and send, on the ——— day of ——— now last past, for the amending the highways in the said township, one wain, cart, or carriage, furnished with three horses (or as the case shall be) and all other necessities meet to carry things convenient for that purpose, and also two able men with the same ——— [If 60 l. a year, ——— three able men ——— and so on.]

If he is not liable to send a cart or carriage, then, ——— that A. O. of the township aforesaid in the county aforesaid, yeoman, occupying lands, tenements, and hereditaments within the said township, of the yearly value of ten pounds, was duly summoned by him the said A. S. to find and send, on the ——— day

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Highways.

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day of ——— now last past, for the amending the highways in the said township, one sufficient labourer [If 20l. a year, two labourers; if 30l. a year, three labourers; if 40l. a year, four sufficient labourers.]

If under 10l. a year, then, ——— that A. O. being an inhabitant in the said township, and of the age of 18 years, and upwards, and under the age of 65 years, and not being an apprentice nor menial servant, was duly summoned by him the said A. S. to find and send on the ——— day of ——— for the amending the highways in the said township, one sufficient labourer ———

If the complaint is for want of paying the composition money, then, ——— that A. O. of ——— yeoman, keeping a team, draught, or plough in the said township, and thereupon liable to find and send, six days in the year, for the amending the highways in the township aforesaid, one wain, cart, or carriage, furnished with [oxen, horses, or other cattle, according to the custom of the country] and all other necessities meet to carry things convenient for that purpose, and also two able men with the same; and that the said A. O. did compound with him the said A. S. for the sum of ——— for and in lieu of the said duty and labour; and that he the said A. O. refuseth to pay, and hath not paid to him the said A. S. the said sum of ———

And so in the other like cases.

F. Indictment for not repairing a common highway.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that from the time whereof the memory of man is not to the contrary, there was, and yet is a common and ancient king's highway leading from the town of ——— in the county of ——— towards and unto the market town of ——— in the county of ———, used for all the liege subjects of our said lord the king, and of his predecessors, with their horses, coaches, carts, and carriages to go, return, pass, ride, and labour at their will and pleasure, and that a certain part of the same king's common highway, situate, lying and being in the parish of ——— in the county of ——— aforesaid, beginning at a place called ——— and so continued towards the market town of ——— aforesaid, for the length of ——— feet, and being of the breadth of ——— feet, on the ——— day of ——— in

Highways.

— in the — year of the reign of — and continually afterwards, until the day of the taking of this inquisition, was and yet is in great decay, for the want of due reparation and amendment of the same; so that the subjects of our said lord the king, passing and travelling through the same, with their horses, coaches, carts and carriages, could not during the time aforesaid, nor yet can go, return, pass, ride, and labour without great danger; to the great damage and common nuisance of all the liege subjects of our said lord the king, passing through that way, and against the peace of our said lord the king, his crown and dignity; And that A. O. of — aforesaid, gentleman, ought by reason of the tenure of his lands and tenements, situate, lying and being at — aforesaid in the county aforesaid, to repair and amend the said highway, when and so often as it shall be necessary.

Or, that the inhabitants of the said parish of — in the said county of — the common highway aforesaid (so as aforesaid being in decay) ought to repair and amend, when and so often as it shall be necessary.

Indictment for not repairing an ancient horse and foot way.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that from the time of which the memory of man is not to the contrary, there was, and yet is, a certain common and ancient highway, leading from — in the county of — to — in the county of — for all the liege subjects of our now lord the king, and his ancestors, on horseback and on foot, to go, return, pass, ride, labour, and drive their cattle at their will, and that a certain part of the same common highway, situate, lying, and being within the parish of — in the county of — aforesaid, beginning at a place called, — and so continued towards the said — of — in the county of — aforesaid, of the length of — feet, and the breadth of — feet, on the — day of — in the — year of the reign of — and continually afterwards, until the day of the taking of this inquisition, at the parish of — aforesaid, in the county aforesaid, was, and yet is, very ruinous, miry, deep, broken, and in such decay, for want of due reparation and amendment of the same, that the liege subjects of our said lord the king, by and through the same way, with their horses and cattle, could not during the time aforesaid, nor yet can go, return, pass, ride, and labour, as they ought and were wont

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to do, without great danger of themselves and of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding, and labouring, and against the peace of our said lord the king. And that the inhabitants of the same parish of ——— in the county aforesaid, the same common highway, so as aforesaid being in decay, ought to repair and amend, when, and so often as it shall be necessary.

Indictment for incroaching upon a highway, by building thereupon.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of ——— carpenter, the ——— day of ——— in the ——— year ——— with force and arms, at ——— in and upon a common highway, in a certain place commonly called ——— there leading from ——— to ——— by a certain building there containing in length ——— feet, and in breadth ——— feet, by him the said A. O. erected and built, hath unlawfully and unjustly incroached, and doth yet incroach, and the building aforesaid so as is aforesaid erected and built by him the said A. O. from the aforesaid ——— day of ——— in the year aforesaid, unto the day of exhibiting this information, at ——— aforesaid in the county aforesaid, with force and arms unlawfully and unjustly hath continued, and doth yet continue, by reason whereof the common highway aforesaid hath become and is greatly straitned, so that the lieges and subjects of the said lord the king upon and through the same common highway aforesaid, with their horses, carts, and carriages, cannot go, pass, ride, and labour as they ought and were wont to do, to the great and common nuisance of all the lieges and subjects of the said lord the king in and through the said common highway going, passing, riding, and labouring, and against the peace of the said lord the king. Trem. 196.

Indictment for inclosing the highway.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That whereas from the time whereof the memory of man is not to the contrary, the liege subjects of our said lord the king had, and lawfully used a certain common highway at ——— in the said county, in a certain place there called ——— leading from the town of ——— aforesaid, to the town of ——— for themselves and
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Highways.

their goods, without any stoppage or hindrance by any ditches, hedges, or other obstacles whatsoever; nevertheless one A. O. of ————aforesaid, in the county of ————aforesaid, yeoman, on the ————day of ————in the ————year of the reign of ————with force and arms at ————aforesaid, in the county of ————aforesaid, in the place aforesaid called ————upon the common highway aforesaid, a certain ditch and quickset hedge did cast up, set, and erect, and the said ditch and quickset hedge so as is aforesaid cast up, set, and erected, doth yet continue and keep; to the great stoppage and hindrance of the liege subjects of our said lord the king, passing in and thro' the said common highway, and against the peace of our said lord the king.

Indictment for laying timber or other obstructions in the highway.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of ———— in the county aforesaid, yeoman, on the ———— day of ———— in the ———— year of the reign of ———— and on divers other days and times as well before as afterwards, with force and arms, at ———— in the said county, in and upon the king's common highway there, leading from ———— unto the town of ———— divers great pieces of timber put and placed, and caused to be put and placed, and the same great pieces of timber so as aforesaid put and placed from the aforesaid ———— day of ———— in the ———— year aforesaid, until the day of exhibiting this information, in and upon the king's common highway aforesaid to be, lie, and remain, hath permitted and doth still permit, to the grievous and common nuisance of all the lieges and subjects of the said lord the king, upon and through the king's common highway aforesaid going, passing, riding and travelling, and against the peace of our said lord the king, his crown and dignity. Trem. 197.

Or, ———— great quantity of dung and other filth, by reason whereof divers hurtful and unwholesome smells from the said dung and other filth did then and there arise, and thereby the air there became, was, and is corrupted and infected ————.

Or, ———— cart loads of rubbish ———— by reason whereof the said highway for the whole time aforesaid was straitened and obstructed, so that the liege subjects of our said lord the king could not so freely pass and repass about their lawful business, through the

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Highways.

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the said common highway there, as they ought and have been accustomed—.

Indictment for stopping up a watercourse, whereby the highway is overflowed.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of the parish of——in the county aforesaid, yeoman, on the ——day of——in the——year of the reign of ——with force and arms, at the parish aforesaid, in the county aforesaid, a certain ancient watercourse adjoining to the king's common highway, within the same parish, leading from the town of——in the county aforesaid, towards and unto——with gravel and other materials, unlawfully and injuriously did obstruct and stop up; and the said watercourse, so as aforesaid obstructed and stopped up from the said——day of——in the year aforesaid until the day of the taking of this inquisition, at the parish aforesaid in the county aforesaid, unlawfully and injuriously hath continued and still doth continue, by reason whereof the rain and waters that were wont and ought to flow and pass through the said watercourse, on the same day and year, and divers other days and times afterwards, between that day and the day of the taking of this inquisition, did overflow and remain, in the king's common highway aforesaid, and thereby the same was, and yet is greatly hurt and spoiled; so that the liege subjects of our said lord the king, through the same way with their horses, coaches, carts and carriages, then and on the said other days and times, could not nor yet can go, return, pass, ride, and labour as they ought, and were wont to do, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding and labouring, and against the peace of our said lord the king.

G. Presentment by a justice.

Westmorland. **A**T the general quarter sessions of the peace of our lord the king, held for the county of——aforesaid, at——in the said county, on Monday the——day of——in the——year of the reign of——before——esquires, and others their companions, justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed,

Highways.

Thomas Carleton, esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, by virtue of the statute in such case made and provided, upon his own proper view and knowledge [or, upon information on oath to him given by A. S. surveyor of the highways for the parish of ——— in the said county] doth present, That from the time whereof the memory of man is not to the contrary, there was and yet is, a certain common and ancient king's highway, leading from the town of ——— in the county of ——— towards and unto ——— used for all the liege subjects of our said lord the king and his predecessors, with their horses, coaches, carts, and carriages, to go, return, pass, ride, and labour at their will; and that a certain part of the same king's common highway, situate, lying, and being in the parish of ——— in the same county, beginning at a place called, ——— and so continued towards the ——— of ——— aforesaid, of the length of ——— feet, and of the breadth of ——— feet, on the ——— day of ——— in the ——— year of the reign of ——— and continually afterwards, until this present day, at the said parish of ——— in the county aforesaid, was and yet is very ruinous, xury, deep, broken and in great decay, for want of due reparation and amendment of the same, so that the liege subjects of our said lord the king, through the same way, with their horses, coaches, carts, and carriages, could not during the time aforesaid, nor yet can go, return, pass, ride, and labour as they ought and were wont to do, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding, and labouring, and against the peace of our said lord the king; and that the inhabitants of the parish of ——— aforesaid, in the county aforesaid, the common highway aforesaid (so as aforesaid being in decay) ought to repair and amend, when and so often as it shall be necessary. In testimony whereof, the said Thomas Carleton, to these presents hath set his hand and seal, this ——— day of ——— in the year aforesaid.

Highwaymen. See Robbery.

Homicide.

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Homicide.

HOMICIDE in law signifies the killing of a man by a man. 1 *Haw.* 66.

And it includes in it, not only petit treason, concerning which see title *Treason*; but also the several offences which are treated of in the following sections.

There is also another kind of untimely death of a man, not properly homicide: When he is killed by a horse, a cart, a tree, or the like, and not by a man; which is called casual death; for which see title *Deodand*.

I. Justifiable homicide.

II. Homicide by misadventure.

III. Homicide by self defence.

IV. Manslaughter.

V. Murder.

VI. Self-murder.

I. Justifiable homicide.

1. To make homicide justifiable, it must be owing to On a real necessity. some unavoidable necessity, to which the person who kills him. another must be reduced, without any manner of fault in himself. 1 *Haw.* 69.

And there must be no malice coloured under pretence of necessity; for wherever a person who kills another, acts in truth upon malice, and takes occasion from the appearance of necessity to execute his own private revenge, he is guilty of murder. 1 *Haw.* 69.

2. If any evil disposed person shall attempt feloniously to Killing robbers and burglars. rob or murder any person in any dwelling house or highway, or feloniously attempt to break any dwelling house in the night time, and shall happen in such felonious intent to be slain; the slayer shall be discharged, and shall forfeit no lands nor goods. 24 *H.* 8. c. 5.

3. If trespassers in a forest, chase, park, or warren, or Trespassers in parks. any inclosed ground wherein deer are kept, will not render themselves to the keepers, upon a hue and cry made to stand to the king's peace, but fly from, or defend themselves against them, they may be slain by them. 1 *Haw.* 71.

Rioters.

4. If rioters, or forcible enterers or detainers, stand in opposition to the justices lawful warrant, and any of them is slain; it is no felony. *Hale's Pl. 37.*

Houseburners.

5. If a man comes to burn my house, and I shoot out of my house, or issue out of my house, and kill him; it is no felony. *Hale's Pl. 39.*

Ravishers.

6. If a woman kill him that assaulteth to ravish her; it is no felony. *Hale's Pl. 39.*

Felon refusing to be arrested.

7. If a person having actually committed a felony, will not suffer himself to be arrested, but stand on his own defence, or fly, so that he cannot possibly be apprehended alive by those who pursue him, whether private persons, or publick officers, with or without a warrant from a magistrate; he may be lawfully slain by them. *1 Haw. 70.*

Suspected felon refusing to be arrested.

8. So if a felony hath actually been committed, and an officer or minister of justice, having lawful warrant so to do, arrest an innocent person, and such person assault the officer or minister of justice; the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwise avoid it, but in striving kill him, it is no felony. And in that case, the officer or minister of justice shall forfeit nothing; but the party so assaulting, or offering to fly away, and is killed, shall forfeit his goods. *3 Inst. 56.*

Felon escaping.

9. Also if a person arrested for felony, break away from his conductors to gaol, they may kill him, if they cannot otherwise take him. But in this case likewise, there must have been a felony actually committed. *Hale's Pl. 36, 37.*

Felon breaking gaol.

10. Also if a criminal endeavouring to break the gaol, assault his gaoler, he may be lawfully killed by him in the affray. *1 Haw. 71.*

Resisting a civil process.

11. In civil causes: Although the sheriff cannot kill a man who flies from the execution of a civil process; yet if he resist the arrest, the sheriff or his officer need not give back, but may kill the assailant. *Hale's Pl. 37.*

Trial and discharge.

So if in the arrest and striving together, the officer kill him, it is no felony. *Hale's Pl. 37.*

12. In all these cases the party upon arraignment having pleaded not guilty, the special matter must be found; whereupon the party shall be dismissed, without any forfeiture, or pardon purchased. *Hale's Pl. 38.*

II. Homicide by misadventure.

1. I have purposely avoided the word *chancemedley* in this place, because authors do not seem to be agreed whether it is to be applied to homicide by *misadventure*, or to *manslaughter*. *Ld. Coke* and *Mr. Hawkins* seem to understand it of *manslaughter*; *Ld. Hale*, and others, of homicide by *misadventure*. The original meaning of the word seems to favour the former opinion, as it signifies a sudden or casual meddling or contention; whereas homicide by *misadventure* supposeth no previous meddling or falling out. But the same author sometimes in different places, applies it to both of them promiscuously.

2. Homicide by misadventure is, where a man is doing a lawful act, without intent of hurt to another, and death casually ensues. *Hale's Pl. 31.* What is homicide by misadventure.

3. As where a labourer being at work with a hatchet, the head flies off, and kills one who stands by. *1 Haw. 73.* Cases of homicide by misadventure.

4. Or where a third person whips a horse, on which a man is riding, whereupon he springs out and runs over a child, and kills him; in which case the rider is guilty of homicide by misadventure, and he who gave the blow of manslaughter. *1 Haw. 73.*

5. But if a person riding in the street whip his horse to put him into speed, and run over a child and kill him, it is homicide and not by misadventure; and if he ride so, in a press of people, with intent to do hurt, and the horse killeth another, it is murder in the rider. *1 H. H. 476.*

6. If a person drives his cart carelessly, and it runs over a child in the street, if he have seen the child, and yet drives on upon him, it is murder; but if he saw not the child, yet it is manslaughter; but if the child had run cross the way, and the cart run over the child before it was possible for the carter to make a stop, it is by misadventure. *1 H. H. 476.*

7. So where workmen throw stones, rubbish, or other things, from an house, in the ordinary course of their business, by which a person underneath happens to be killed; if they look out and give timely warning to those below, it will be homicide by misadventure; if without such caution, it will amount to manslaughter at least, it was a lawful act, but done in an improper manner. It is said by some, that if this be done in the streets of *London*,

Homicide.

or other populous towns, it will be manslaughter notwithstanding the caution above mentioned. But this will admit of some limitation. If it be done early in the morning, when few or no people are stirring, and the ordinary caution is used, it seemeth that the party is excusable. But when the streets are full, that will not suffice; for in the hurry and noise of a crouded street, few people hear the warning, or sufficiently attend to it. *Fest.* 262, 263.

8. It is said before, that this homicide is only when it happeneth upon a man's doing a lawful act; for if the act be unlawful, it is murder. As if a person, meaning to steal a deer, in another man's park, shooteth at the deer, and by the glance of the arrow killeth a boy, that is hidden in a bush; this is murder, for that the act was unlawful, altho' he had no intent to hurt the boy, nor knew of him. But if the owner of the park had shot at his own deer, and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by misadventure, and no felony. 3 *Inst.* 56.

9. So if any one shoot at any wild fowl upon a tree, and the arrow killeth any reasonable creature afar off, without any evil intent in him, this is by misadventure; for it was not unlawful to shoot at the wild fowl. But if he had shot at a cock or a hen, or any tame fowl of another man's, and the arrow by mischance had killed a man; if his intention was to steal the poultry, (which must be collected from circumstances), it will be murder by reason of that felonious intent; but if it was done wantonly, and without that intention, it will be barely manslaughter. *Fest.* 258, 9.

10. The rule before laid down supposeth, that the act from which death ensued, was *malum in se*. For if it was barely *malum prohibitum*, as shooting at game by a person not qualified by statute law to keep or use a gun for that purpose; the case of a person so offending, will fall under the same rule as that of a qualified man. For the statutes prohibiting the destruction of the game, under certain penalties, will not in a question of this kind enhance the accident beyond its intrinsic moment. *Fest.* 259.

11. Further, if there be an evil intent, tho' that intent extendeth not to death, it is murder. Thus, if a man, knowing that many people are in the street, throw a stone over a wall, intending only to fright them, or to give them a little hurt, and thereupon one is killed, this is murder;

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murder ; for he had an ill intent, tho' that intent extended not to death, and tho' he knew not the party slain. 3 *Inst.*

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12. And it is a general rule, in case of all felonies, that wherever a man intending to commit one felony, happens to commit another, he is as much guilty as if he had intended the felony which he actually commits.

1 *Haw.* 74.

13. But in all the cases above, if it doth only hurt a man, by such an accident, it is nevertheless a trespass; and the person hurt shall recover his damages; for tho' the chance excuse from felony, yet it excuseth not from trespass. 1 *H. H.* 472.

14. If a person escape that hath killed another by misadventure, the town shall be amerced. 2 *Inst.* 149.

15. This homicide is not felony, because it is not accompanied with a felonious intent, which is necessary in every felony. 1 *Haw.* 75.

This kind of homicide no felony.

16. But yet a person guilty thereof is not bailable by justices of the peace, but must be committed to the assizes.

1 *Haw.* 75.

But if he is taken only on a slight suspicion, the justices of the peace may bail him. 2 *Haw.* 105.

17. Altho' this homicide is not properly a man's crime, but his misfortune; yet because the king hath lost his subject, and in respect of the great favour the law hath to the life of man, and to the end that men should use all care, diligence, and circumspection in all they do, that no hurt should come of their actions, a person convicted hereof shall forfeit his goods, and shall not presently be discharged of his imprisonment, but bailed, that he may sue out his pardon, which he shall have out of the chancery of course.

Forfeitures

1 *H. H.* 477, 492. 1 *Haw.* 76.

III. Homicide by self-defence.

1. Homicide in a man's own defence seems to be, where one who hath no other possible means of preserving his life from one who combats with him on a sudden quarrel, kills the person by whom he is reduced to such an inevitable necessity. 1 *Haw.* 75.

Se defendendo, what.

2. And not only he, who upon an assault retreats to a wall, or some such strait, beyond which he can go no farther, before he kills the other, is judged by the law to act upon unavoidable necessity; but also he, who being assaulted in such a manner, and in such a place,

Cases of se defendendo.

Homicide.

that he cannot go back without manifestly endangering his life, kills the other without retreating at all. 1 *Haw.* 75.

3. And notwithstanding a person who retreats from an assault to the wall, give the other wounds in his retreat, yet if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *se defendendo* only. 1 *Haw.* 75.

4. But if the mortal wound was first given, then it is manslaughter. *Hale's Pl.* 42.

5. And an officer who kills one that resists him in the execution of his office, and even a private person that kills one who feloniously assaults him in the highway, may justify the fact, without ever giving back at all. 1 *Haw.* 75.

6. But if a person upon malice *prepenſe* strike another, and then fly to the wall, and there in his own defence kills the other, this is murder. *Hale's Pl.* 42.

Accessaries.

7. Hereof there can be no accessaries, either before or after the act, because it is not done with a felonious intent, but upon inevitable necessity. 3 *Inst.* 56.

Escape.

8. If a man escape, that hath killed another in his own defence, the town shall be amerced. 2 *Inst.* 315.

Bail.

9. A person guilty hereof is not bailable by justices of the peace; but they must commit him till the assizes. 1 *Haw.* 76.

But otherwise it is, if he is taken only on slight suspicion. 2 *Haw.* 105.

Power of justices
of the peace.

10. Lord Coke (2 *Inst.* 316.) says, that the justices of the peace cannot take an indictment of killing a man *se defendendo*; because their commission is not general, as is that of the justices of gaol delivery, but limited: But lord Hale (2 *H. H.* 46.) holds the contrary.

Forfeiture.

11. A person convicted hereof, shall not be discharged out of prison but upon bail, and shall forfeit all his goods, altho' the cause was inevitable. And this because of the great regard which the law hath for the life of man; and also by reason that the law intends it had a beginning upon an unlawful cause; for quarrels are not presumed to grow without some wrongs in words or deeds, and so malice on both sides. But he shall have his pardon out of the chancery of course. 3 *Inst.* 56. 1 *Haw.* 76.

Flight.

22. If a man be indicted for homicide *se defendendo*, and is found not guilty, yet if it be found that he fled for the same, he shall forfeit his goods for such flight, in not standing to the law of the land. 1 *H. H.* 493.

W. Manslaughter.

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IV. Manslaughter.

1. By manslaughter is to be understood such killing of ^{Manslaughter,} a man as happens either on a sudden quarrel, or in the ^{what.} commission of an unlawful act, without any deliberate intention of doing an mischief at all. 1 *Haw.* 76.

2. There is no difference between murder and man- ^{Without malice,} slaughter, but that murder is upon malice forethought, and manslaughter upon a sudden occasion. As if two meet together, and striving for the wall, the one kill the other, this is manslaughter and felony. And so it is, if they had upon that sudden occasion gone into the field and fought, and the one had killed the other, this had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the blood was never cooled, till the blow was given.

3 *Inst.* 55.

3. There can be no accessaries to this offence before ^{Accessaries,} the fact, because it must be done without premeditation.

1 *Haw.* 76.

But there may be accessaries after the fact. 3 *Inst.*

55.

4. This offence is notailable by justices of the peace. *Bail.*

3 *Ed. 1. c.* 15.

15. It is within the benefit of clergy; but the offender ^{Clergy.} shall forfeit as in other felonies. 2 *H. H.* 344.

6. But there is one kind of manslaughter, which by ^{Sabbings,} the statute of the 1 *J. c.* 8. is excluded the benefit of clergy; viz. He who shall stab or thrust any person that hath not then any weapon drawn, or hath not then stricken first, so as the person so stabbed or thrust shall die thereof in six months, altho' it cannot be proved that the same was done of malice forethought, shall be guilty of felony without benefit of clergy.

V. Murder.

1. Murder is, when a man of sound memory, and of ^{Murder, what.} the age of discretion, unlawfully killeth any person under the king's peace, with malice forethought, either expressed by the party, or implied by law; so as the party wounded or hurt, die of the wound or hurt, within a year and a day. 3 *Inst.* 47.

2. By *malice expressed*, is meant, a deliberate intention ^{Cases of murder,} of doing any bodily harm to another, whereunto by law a person is not authorized. 1 *H. H.* 154.

And the evidences of such a malice must arise from external circumstances discovering that inward intention; as lying in wait, menacings antecedent, former grudges, deliberate compassings, and the like; which are various, according to variety of circumstances. 1 *H. H.* 451.

3. *Malice implied* is in several cases; as when one voluntarily kills another, without any provocation; for in this case the law presumes it to be malicious, and that he is a publick enemy of mankind. 1 *H. H.* 455, 456.

4. Poisoning also implies malice, because it is an act of deliberation. 1 *H. H.* 455.

5. Also when an officer is killed in the execution of his office, it is murder, and the law implies malice. 1 *H. H.* 457.

6. Also where a prisoner dieth by duress of the gaoler, the law implies malice, by reason of the cruelty. 3 *Inst.* 52.

7. And in general, any formed design of doing mischief may be called malice, and therefore not such killing only as proceeds from premeditated hatred or revenge against the person killed, but also in many other cases, such as is accompanied with those circumstances that shew the heart to be perversely wicked, is adjudged to be of malice *prepenſe*, and consequently murder. 2 *Haw.* 80. *Strange* 766.

For when the law makes use of the term *malice aforethought*, as descriptive of the crime of murder, it is not to be understood in that narrow restrained sense to which the modern use of the word *malice* is apt to lead one, a *principal of malevolence to particulars*; for the law by the term *malice (malitia)* in this instance meaneth, that the fact hath been attended with such circumstances, as are the ordinary symptoms of a wicked heart, regardless of social duty, and fatally bent upon mischief. *Fost.* 256, 7.

8. And wherever it appears that a man killed another, it shall be intended *prima facie* that he did it maliciously, unless he can make out the contrary, by shewing that he did it on a sudden provocation, or the like. 1 *Haw.* 82.

9. Also wherever a person in cool blood, by way of revenge, beats another in such a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone so far. 1 *Haw.* 83.

10. And it seems to be agreed, that no breach of a man's word or promise, no trespass either to lands or goods, no affront by bare words or gestures, however false or malicious it may be, and aggravated with the most provoking circumstances, will excuse him from being guilty of murder, who is so far transported thereby, as immediately to attack the person who offends him, in such a manner as manifestly indangers his life, without giving him time to put himself upon his guard, if he kills him in pursuance of such an assault, whether the person slain did at all fight in his defence or not. 1 *Haw.* 82.

11. If a man by harsh and unkind usage put another into such a passion of grief or fear, that the party either die suddenly, or contract some disease whereof he dies, though this may be murder or manslaughter in the sight of God, yet in a human judicature it cannot come under the judgment of felony, because no external act of violence was offered, whereof the law can take notice. 1 *H. H.* 429.

12. If two fall out upon a sudden occasion, and agree to fight in such a field, and each of them go and fetch their weapon, and go into the field, and therein fight, and the one killeth the other, this is no malice pre-pensed; for the fetching of the weapon, and going into the field, is but a continuance of the sudden falling out, and the blood was never cooled. But if there were deliberation, as that they meet the next day, nay though it were the same day, if there were such a competent distance of time, that in common presumption, they had time of deliberation, then it is murder. 3 *Inst.* 51. 1 *H. H.* 453.

13. And the law so far abhors all duelling in cold blood, that not only the principal who actually kills the other, but also his seconds, are guilty of murder, whether they fought or not. And it is holden, that the seconds of the party slain are likewise guilty as accessaries. 1 *Haw.* 82.

14. If a physician or surgeon gives a person a potion, without any intent of doing him any bodily harm, but with intent to cure or prevent a disease, and contrary to the physician or surgeon's expectation it kills him, this is no homicide. And lord *Hale* says, he holds their opinion, to be erroneous, who think that if he be no licensed surgeon or physician, that occasioneth this mischance, that then it is felony. These opinions (he says) may caution ignorant

ignorant people not to be too busy in this kind with tampering with physick, but are no safe rule for a judge or jury to go by. 1 *H. H.* 429.

15. But if a woman be with child, and any gives her a potion to destroy the child within her, and she take it, and it works so strongly that it kills her, this is murder; for it was not given her to cure her of a disease, but unlawfully to destroy the child within her; and therefore he that gives her a potion to this end, must take the hazard, and if it kills the mother it is murder. 1 *H. H.* 430.

16. Also if a woman be quick with child, and by a potion or otherwise, killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and she is delivered of a dead child, this is a great misprision, but no murder: but if the child be born alive, and dieth of the potion, battery, or other cause, this is murder. 3 *Inst.* 50.

Lord *Hale* says, that in this case it cannot legally be known, whether the child were killed or not; and that if the child die, after it is born and baptized, of the stroke given to the mother, yet it is not homicide. 1 *H. H.* 433. And Mr. *Dalton* says, whether it die within her body, or shortly after her delivery, it maketh no difference. *Dalt.* 332. But Mr. *Hawkins* says, that (in this latter case) it seems clearly to be murder, notwithstanding some opinions to the contrary. 1 *Haw.* 80.

17. Also it seems agreed, that where one counsels a woman to kill her child when it shall be born, who afterwards doth kill it in pursuance of such advice, he is an accessory to the murder. 1 *Haw.* 80.

18. By the 21 *J. c.* 27. If a woman be delivered of a bastard child, and she endeavour privately, either by drowning or secret burying thereof, or any other way, either by herself, or the procuring of others, so to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed; she shall suffer death as in case of murder, except she can prove by one witness that it was born dead.

19. Lord *Hale* says, if a man have a beast, as a bull, cow, horse, or dog, used to hurt people, and he hath notice thereof, and it doth any body hurt, he is chargeable with an action for it:

If he have no particular notice that it did any such thing before, yet if it is *feræ naturæ*, as a lion, a bear, a wolf, yea an ape, or a monkey, if it get loose and do harm

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25. If murderers, at any time

harm to any person, the owner is liable to an action for the damage :

If he have notice of the quality of any such his beast, and use all due diligence to keep him up, yet he breaks loose and kills a man, this is no felony in the owner, but the beast is a deodand :

But if he did not use that due diligence, but through negligence the beast goes abroad, after warning or notice of his condition, and kills a man, he thinks it is manslaughter in the owner :

But if he did purposely let him loose or wander abroad, with design to do mischief, nay though it were with design only to fright people and make sport, and it kills a man, it is murder in the owner. 1 H. H. 431.

20. They that are present when any man is slain, and do not their best endeavour to apprehend the murderer or manslayer, shall be fined and imprisoned. 3 *Inst.* 53. Persons present when murder is committed.

21. If a murder be committed in the day time, in a town not inclosed, and the murderer escape, the township shall be amerced : but if inclosed, whether the murder be in the night or day, the town shall be amerced. 3 *Inst.* 53. Where the stroke is in one county, and the death in another.

22. Where any person shall be feloniously stricken or poisoned in one county, and die in another county ; the offender may be indicted in the county where the party dies, before the coroner, justices of the peace, or other justices. 2 & 3 *Ed. 6. c. 24. f. 2.* Where the principal committed the offence in one county, and the accessory in another.

23. Where a murder is committed in one county, and a person is accessory in another county, he may be indicted in the county where he was accessory, on certificate of the conviction of the principal in the county where he committed the murder. 2 & 3 *Ed. 6. c. 24. f. 4.* Where the stroke is in England, and the death out of England ; and vice versa.

24. If any person be feloniously stricken or poisoned upon the sea, or out of *England*, and shall die of the same in *England* ; or shall be feloniously stricken or poisoned in *England*, and shall die of the same on the sea, or out of *England* ; the offenders and accessories may be indicted in the county where any such death, stroke, or poisoning shall happen, before the coroner, justices of the peace, or other justices ; and the judges of assize, or any superior court, to which the indictment shall be removed, shall proceed thereon accordingly. 2 *G. 2 c. 21.*

25. If any man be slain or murdered, and the slayers, murderers, and accessories be indicted, they may be tried at any time within the year, and not tarry the year and day Trial, when.

day for an appeal: but if upon trial they are acquitted, they shall not be suffered to go at large, but be committed or bailed, till the year and day be past: and an appeal may be brought, notwithstanding such acquittal on indictment; if he hath not had his clergy. 3 H. 7. c. 1.

Judgment.

26. Sentence, in case of murder, shall be pronounced in open court immediately after conviction, unless the court shall see reasonable cause for postponing the same; in which shall be expressed not only the usual judgment of death, but also the time appointed for execution, and the marks of infamy directed for such offenders. 25 G. 2. c. 37. f. 3.

How to be deemed after judgment.

27. And after conviction and judgment, the gaoler shall confine the prisoner to some cell, or other proper and safe place in the prison, apart from the other prisoners; and no person, except the gaoler, or his servants, shall have access to him, without a licence from the judge, sheriff, or under sheriff. But if the judge shall see cause to respite the execution, he may, during the time of such stay, relax, or release, by licence under his hand, any or all of the restraints or regulations before directed to be observed by the gaoler. 25 G. 2. c. 37. f. 6, 7.

And after sentence, and until execution, the offender shall be fed with bread and water only (except in case of receiving the sacrament; or of any violent sickness or wound, in which case some known physician, surgeon, or apothecary may be admitted by the gaoler to administer necessaries, his name and place of abode being first entered in the books of such prison). And if the gaoler shall offend against, or neglect to put in execution, any of the said directions; he shall forfeit his office, and be fined 20 l. and imprisoned till paid. *id.* f. 8.

Execution.

28. The execution of persons found guilty of wilful murder, shall be on the day next but one after sentence passed, unless it be *sunday*, and in that case on the *monday* following. 25 G. 2. c. 37. f. 1.

But if there shall appear reasonable cause, the judge after sentence pronounced, may stay the execution at his discretion. *id.* f. 4.

Rescue.

29. And if any person shall by force set at liberty or rescue, or attempt to set at liberty, or rescue, any person out of prison, committed for, or found guilty of murder; or rescue, or attempt to rescue any such person going to, or during execution; he shall be guilty of felony without benefit of clergy. 25 G. 2. c. 37. f. 9.

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30. The body, if in *London* or *Middlesex*, shall be immediately conveyed by the sheriff, to the surgeons hall, or such other place as the surgeons company shall appoint, to be by them dissected and anatomized; and if elsewhere, shall be delivered to such surgeon as the judge shall direct, for the purpose aforesaid. 25 G. 2. c. 37. Body not to be buried.
f. 2.

And the judge may direct the body to be hung in chains, or anatomized; but in no case whatsoever to be buried, unless after the same shall have been dissected and anatomized. *f. 5.*

At a meeting of the judges to consider of this act, there was some doubt whether hanging in chains might ever be made part of the sentence; but on debate it was agreed by nine judges, that in all cases within the act, the judgment for dissection and anatomizing only should be part of the sentence: and if it should be thought adviseable, the judge might afterwards direct the hanging in chains by special order to the sheriff, pursuant to the power given by this clause. *Post. 107.*

31. And if after execution, any person shall by force rescue, or attempt to rescue the body; he shall be guilty of felony, and transported for seven years. 25 G. 2. c. 37. Rescuing the body.
f. 10.

32. The principal in murder is ousted of clergy in all cases, and the accessory before is also ousted of clergy in all cases, but the accessory after is in no case ousted of clergy. 2 H. H. 344. How far the accessory shall have his clergy.

33. All murders committed by any person in the fleet Navy, shall be punished with death, by the sentence of a court marshal. 22 G. 2. c. 33. art. 28.

VI. Self-Murder.

1. *A felo de se*, or felon of himself, is a person, who being of sound mind, and of the age of discretion, voluntarily killeth himself. 3 Inst. 54. 1 H. H. 411. Felo de se.

2. If a man give himself a wound, intending to be *felo de se*, and dieth not within the year and day after the wound, he is not *felo de se*. 3 Inst. 54. Year and day.

3. Mr. *Hawkins* speaks with some warmth against an unaccountable notion (as he calls it) which hath prevailed of late, that every one who kills himself must be *non compos* of course; because it is said to be impossible, that a man in his senses should do a thing so contrary to nature, and all sense and reason. But he argues, that if this doctrine

trine were allowable, it might be applied in excuse of many other crimes as well as this; as for instance that of a mother murdering her child, which is also against nature and reason: and this consideration, instead of being the highest aggravation of a crime, would make it no crime at all; for it is certain a person *non compos mentis* can be guilty of no crime. 1 *Haw.* 67.

And lord *Hale* says, it is not every melancholy or hypochondriacal distemper, that denominates a man *non compos*, for there are few who commit this offence, but are under such infirmities; but it must be such an alienation of mind, as renders a person to be a madman, or frantick, or destitute of the use of reason, which will denominate him *non compos*. 1 *H. H.* 412.

Forfeiture.

4. The offender herein doth incur a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land, without an attainder by course of law. 3 *Inst.* 54.

Nor shall his goods be forfeited, until it be lawfully found by the oath of 12 men; and this belongs to the coroner to inquire of, upon view of the body. And if the body cannot be viewed, the justices in sessions may inquire thereof; for they have power by their commission to inquire of all felonies: and a presentment thereof found before them, intitles the king to the forfeiture. 3 *Inst.* 54, 55. *Dalt. c.* 144.

But nevertheless, the forfeiture shall relate to the time of the wound given, and not to the time of the death, or of the inquisition. 3 *Inst.* 55. *Dalt. c.* 144. 1 *Hale's Pl.* 29. 1 *Haw.* 68.

But lord *Hale*, in his history of the pleas of the crown, seemeth to doubt, whether it shall not relate to the time of the death only, and not to the time of the wound given. 1 *H. H.* 414.

Corruption of blood.

5. Nor doth the offence work any corruption of blood, or loss of dower. 1 *Haw.* 68.

Burial.

6. By the rubrick in the book of common prayer, before the burial office (confirmed by act of parliament, 13 & 14 *C. 2. c.* 4.) persons who have laid violent hands upon themselves, shall not have that office used at their interment.

Hops. See Exercise.

Horses.

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Horses.

- I. *Stealing of horses.*
- II. *Buying of stolen horses.*
- III. *Killing or maiming horses in the night.*
- IV. *Putting stoned horses on commons.*
- V. *Putting scabbed horses on commons.*

I. *Stealing of horses.*

BY the 1 *Ed. 6. c. 12. s. 10.* No person or persons convicted for feloniously stealing of horses, geldings, or mares, shall be admitted to enjoy the privilege of clergy.

And by the 2 & 3 *Ed. 6. c. 33.* Whereas there hath been some doubt upon the foregoing clause, whether a person convicted for feloniously stealing of one horse, gelding, or mare, ought to be admitted to enjoy the privilege of clergy, it is declared and enacted, that all and singular person and persons feloniously taking or stealing any horse, gelding, or mare, shall not be admitted to enjoy the privilege of clergy, but shall be put from the same.

The reason of which doubt is obvious; because a penal statute (and especially where life is concerned) ought not to be extended beyond the express words thereof, but to be taken strictly in favour of the subject.

If they be stolen out of the stable or other curtilage of the dwelling house, in the night time, it falls under the denomination of *Burglary*; if in the day time, it falls under the denomination of *Larceny from the house*: And in either case, there is a reward of 40 l. for convicting an offender, and an exemption from offices; as is set forth at large under the respective titles of *Burglary* and *Larceny*.

II. *Buying of stolen horses.*

By the 2 & 3 *P. & M. c. 7.* and 31 *El. c. 12.* it is enacted as follows:

I. The keeper of every fair and market shall yearly ap- Horse fair, point a certain special and open place, where horses shall be sold in any fair or market overt.

VOL. II.

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2. And

Toll taker.

2. And shall appoint one or more persons to take toll there, and to keep the same place from ten in the forenoon till sun-set.

Horse to be shewed one hour.

3. And the sale or exchange in any fair or market overt, of any stolen horse, shall not alter the property, unless the same shall be, in the time of the said fair or market, openly ridden, led, walked, driven, or kept standing, for one hour together at least, between ten of the clock and sun-set, in the open place of the fair or market, wherein horses are commonly used to be sold, and not within any house, yard, backside, or other privy or secret place.

Seller and buyer to go to the toll taker.

4. Nor unless all the parties to the bargain shall come together, and bring the horse to the open place appointed for the toll taker, or for the book keeper where no toll is due.

Sale to be entered.

5. Nor unless such toll taker there, or (where no toll is paid) the book keeper or chief officer of the fair or market, shall take upon him perfect knowledge of the seller, and of his true christian name and surname and place of abode, and shall enter all the same his knowledge in a book to be kept for that purpose, or else that the seller shall bring to the toll taker, or other officer aforesaid, one credible person, that shall testify that he knoweth the seller, and his true name, surname, mystery, and dwelling place, and there enter the same, and also the name, surname, mystery, and dwelling place of him that so avoucheth his knowledge.

And the price.

6. Nor unless he also cause to be entered, the very true price.

And marks.

7. And also the colour, and one special mark at least.

Toll to be paid.

8. And also the buyer to pay the toll, if any is due; if not, then to give 1 d. for the entry.

Certificate of entry.

9. Which done, the person entring the same shall give to the buyer requiring and paying 2 d. for the same, a note in writing of all the contents of such entry subscribed with his hand.

Penalties.

10. Every person offending in any of the premises shall forfeit 5 l. half to the king, and half to him that shall sue before the justices in sessions, or in any ordinary court of record; and the sale shall be void: and the owner may seize and take his horse again, or have an action of detinue or replevin for the same.

Case where the sale shall have fully entered.

11. And if any horse shall be stolen, and after shall be sold in open fair or market, and the sale shall be used in all points as aforesaid, yet nevertheless such sale in six months

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months after the felony done, shall not take away the owner's property, so as claim be made in six months, where the horse shall be found, before the mayor, if in a town corporate, or else before a justice near the place where found, and so as proof be made before such magistrate in 40 days next ensuing by two witnesses, that the property of such horse was in the party claiming, and was stolen from him within six months next before such claim; but the party from whom the same was stolen, may at all times after, notwithstanding such sale, take again the said horse, on payment, or readiness to offer to the party who hath possession, so much as he shall swear before such magistrate, that he paid for the same.

III. Killing, or maiming horses in the night.

1. By the 22 & 23 C. 2. c. 7. Where any person shall ^{Killing.} in the night time maliciously kill or destroy any horses; he shall be guilty of felony, and may be transported, by three justices in sessions, for seven years.

2. And if any person shall in the night time maliciously ^{Maiming.} wound or hurt any horses; he shall forfeit to the party grieved treble damages, to be recovered by action at law, or before three justices.

IV. Putting stoned horses on commons.

1. No person shall put in any forest, chase, moor, heath, ^{Size.} common, or waste (where mares or fillies are used to be kept) any stoned horse above the age of two years, not being 15 hands high, within the shires and territories of Norfolk, Suffolk, Cambridge, Buckingham, Huntingdon, Essex, Kent, South-Hampshire, North-Wiltshire, Oxford, Berkshire, Worcester, Gloucester, Somerset, North-Wales, South-Wales, Bedford, Warwick, Northampton, Yorkshire, Cheshire, Staffordshire, Lancashire, Salop, Leicester, Hereford, and Lincoln; nor under 14 hands in any other county (except Cornwall, 21 J. c. 28. f. 12), on pain of forfeiting the same. 32 H. 8. c. 13. f. 2, 10.

But this shall not extend to the *marshes* in the counties of Cambridge, Huntingdon, Suffolk, Northampton, Lincoln, and Norfolk; provided that the horses be of 13 hands. 8 El. c. 8. f. 3.

Also nothing herein shall extend to any stoned horse, that shall happen once in a year to break out of any pa-

flure into such common, so that he do not stay there above four days after notice given at the dwelling house of the owner, or after publication thereof on a *sunday* or other festival, in the parish church where the owner or possessor of such horse dwelleth. 32 H. 8. c. 13. f. 5.

Seizing the same.

2. And any person may feize any such horse so being under size, in manner following: He shall go to the keeper of such forest, or (out of such forest) to the constable of the next town; and require him to go with him, to bring such horse to the next pound; and there to be measured by such officer, in the presence of three other honest men to be appointed by the officer; and if he shall be found contrary to what is above expressed, such person may take him for his own use. 32 H. 8. c. 13. f. 3.

And if such keeper, or constable, or other of the three persons shall refuse to do as is aforesaid; he shall forfeit 40s. f. 4.

Driving the common.

3. And all such commons and other places shall, within 15 days after *Michaelmas* yearly, be driven by the owners and keepers, or constables, respectively, on pain of 40s. and they may also drive the same at any other time when they shall think meet. 32 H. 8. c. 13. f. 6.

And if in any of the said drifts, there shall be found any mare, filly, sole, or gelding, that shall then be thought not able, nor like to grow to be able to bear soles of reasonable stature, or to do profitable labours, by the discretion of the drivers, or of the more number of them; they may kill and bury them. f. 7.

Penalties.

4. All which said forfeitures shall be half to the king, and half to him that shall sue: and the justices in sessions, and stewards of leets, may inquire thereof; and the steward shall certify his presentments to the next sessions. 32 H. 8. c. 13. f. 8.

V. Putting scabbed horses on commons.

Scabbed.

No person shall have, or put to pasture, any horse, gelding, or mare, infected with scab or mange, in any common, or common fields; on pain of 10s. which offence shall be inquirable in the leet, as other common annoyances

annoyances be, and the forfeitures shall be to the lord of the leet. 32 H. 8. c. 13. f. 9.

Houses (duty on). See Windows.
Housebreaking. See Burglary and Larceny.

House of correction.

1. BY the 7 J. c. 4. It was enacted, that before *Mitcham* 1611, there should be built or provided within every county, one or more fit and convenient houses of correction, with convenient backside thereunto adjoining, together with mills, turns, cards, and such like necessary implements, to set rogues, vagabonds, or other idle, vagrant, and disorderly persons on work; which houses were to be purchased, conveyed, or assured unto such persons, as by the justices in sessions should be directed, upon trust that the same should be employed for the keeping, correcting, and setting to work the said rogues, vagabonds, or sturdy beggars, and other idle and disorderly persons. f. 2.

Building or repairing houses of correction.

And by the 17 G. 2. c. 5. On presentment of the grand jury, at the assizes, great sessions, or general gaol delivery, held for any county or liberty (or at the general sessions, or general quarter sessions of the peace, where there shall be no assizes, great sessions, or general gaol delivery held, 14 G. 2. c. 33. f. 2.) that there is no house of correction, and that it will be necessary to provide one or more; or that the houses of correction already provided are not sufficient or convenient, or want to be enlarged; the justices in sessions shall have power to build or enlarge one or more fit houses of correction, or to buy or hire houses for that purpose, with convenient backside or outlets thereto adjoining, or to purchase land, and to erect such house or houses upon part thereof, and to lay out the rest of such lands for such backside or outlets: and to conclude and agree upon raising such sums of money, as on examination of able and sufficient workmen, or others, shall appear to be necessary for that purpose: And if houses or lands are to be purchased, they shall be conveyed to such persons as the said justices in sessions

shall direct, in trust and for the uses and purposes aforesaid. *f. 30.*

Appointing the
master,

2. And the justices in sessions shall appoint at their will and pleasure fit persons to be governors or masters of such houses so to be provided. *7 J. c. 4. f. 4. 17 G. 2. c. 5. f. 31.*

His duty.

3. And for the said master or governor's travel and care to be had in the said service, and for the relieving of such as shall be weak and sick in his custody, the justices in sessions shall appoint such sums yearly as they shall think meet, to be paid quarterly beforehand by the treasurer (the said master or governor giving sufficient security for the continuance and performance of the said service.) *7 J. c. 4. f. 6. 17 G. 2. c. 5. f. 33.*

Which sums shall be paid out of the general county rate, by the *12 G. 2. c. 29.*

Fitting up the
house.

4. And the justices in sessions shall take care, that the houses of correction (except those erected or maintained by particular founders) shall be duly fitted up and supplied with implements, materials, and furniture, for keeping, relieving, employing, and correcting all idle and disorderly persons, rogues, vagabonds, incorrigible rogues, and others, who shall be sent to, confined or continued in the same; and shall make such orders and regulations as they shall think fit, for the better governing and regulating the said houses, and for employing, relieving, and punishing the persons therein, or for sending them to or from thence; which orders shall not be removed by any certiorari. *17 G. 2. c. 5. f. 31.*

Commitment
thither.

5. And whereas doubts may arise, where authority is given to any justice or justices, to commit offenders to the house of correction, for offences cognizable before them out of sessions, how long offenders may be there detained, and in what manner treated, where the time and manner of their punishment is not by law expressly limited; it is enacted, that where any offenders shall be committed as aforesaid, by virtue of any law in being or to be made, and the time and manner of their punishment is not expressly limited, the said justice or justices shall commit such offenders to the house of correction, there to be kept to hard labour until the next general or quarter sessions, or until discharged by due course of law: And two justices (of which the justice who committed him to be one) may discharge the said offender before the sessions, if they see cause; and if he shall not be so discharged, the said sessions may either discharge him, or continue him

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him further not exceeding three months. 17 G. 2. c. 5. f. 32.

And where any person liable by law to be committed to the house of correction, shall be apprehended within any liberty, city, or town corporate, whose inhabitants are contributory to the house of correction of the county, the justices of such liberty may commit such person to the house of correction of the county. 15 G. 2. c. 24.

6. The said master or governor shall have power to set such rogues, vagabonds, idle and disorderly persons, as shall be brought or sent to the said house, to work and labour (being able), for such time as they shall continue therein, and to punish them by putting fetters or gives upon them, and by moderate whipping: And the said rogues, vagabonds, and idle persons, during such time as they shall continue in the said house of correction, shall in no sort be chargeable to the country for any allowance, either at their bringing in, or going forth, or during their abode there, but shall have such and so much allowance as they shall deserve by their own labour and work. 7 J. c. 4. f. 4.

And if the master shall not, at every quarter sessions, yield a true account of all such persons as have been committed to his custody: or if any person committed to his custody, shall be troublesome to the country, by going abroad; or otherwise shall escape away from the house of correction, before he shall be from thence lawfully delivered; then the said justices shall set down such fines and penalties upon the said master or governor, as they shall think fit; and all fines and penalties shall be paid to the treasurer, and accounted for by him. 7 J. c. 4. f. 9.

And two justices within the respective hundreds, divisions, or jurisdictions, where there shall be any house of correction, or any two justices appointed by the sessions, shall visit the same twice a year, or oftener if need be, and report the state thereof to the next sessions. And if the governors thereof shall not set or keep the said idle and disorderly persons, rogues, vagabonds, and incorrigible rogues, to hard labour, and punish and correct them according to the directions of their warrants of commitment, or shall otherwise misbehave themselves, the said justices in sessions shall fine them, as by the 7 J. c. 4. the fines to be paid to the treasurer, and accounted for by him as part of the county stock. 17 G. 2. c. 9. f. 31.

Removing the
master.

7. The justices in sessions may remove the said governor or master; and if any person removed by order of sessions, shall refuse or neglect to quit possession, for ten days after notice given him in writing by the clerk of the peace, any two justices (on producing to them such order of sessions, or an attested copy thereof, and an oath of one witness of such notice having been given, and of his having refused or neglected to quit possession) may by their warrant direct the sheriff to remove him, who shall thereupon clear the possession as in case of a writ of *habere facias possessionem*. 17 G. 2. c. 5. s. 31.

Spirituous li-
quors not to be
drank therein.

8. By the 24 G. 3. c. 40. No spirituous liquors shall be sold or used in any house of correction; as may be seen more at large, under the article relating to spirituous liquors, in the title *Exercise*.

Expences of the
whole.

9. And to defray the expences of erecting, purchasing, hiring, enlarging, altering, and repairing houses of correction, and of purchasing land to erect them upon, and for backslides and outlets, and of fitting up and furnishing such houses, and of sending persons to and from the same, and employing them there, the justices in sessions may cause such sums as shall be necessary, to be raised in the same manner as rates are to be raised by the 12 G. 2. c. 29. 17 G. 2. c. 5. s. 33.

General form of a commitment to the house of correction.

Westmorland.

{ J. P. esquire, one of the justices of our lord the king assigned to keep the peace within the said county, to the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county.

THESE are to command you the said constable in his said majesty's name forthwith to convey and deliver into the custody of the said keeper of the said house of correction the body of A. O. being charged before me [or, convicted before me, or otherwise as the case shall be: And here set forth the offence.] And you the said keeper are hereby required to receive the said A. O. into your custody in the said house of correction, and him there safely to keep, until — [or, for the space of — And here set forth the time, and the

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the manner of punishment.] Herein fail you not. Given under my hand and seal the ——— day of ——— in the ——— year of ———.

1 Hue and cry.

1. LORD Coke saith, that hue and cry (called in ancient records *hutesum & clamor*) do mean the same thing; for that *huer* in French is to hoot or shout, in English to cry. 2 *Inst.* 173. 3 *Inst.* 116. Meaning of the words.

But since it appeareth by the old books (of which also lord Coke maketh observation, 2 *Inst.* 173.) that hue and cry was anciently both by horn and by voice, it may seem that these two words are not synonymous, but that this *hutesum* or *hooting* is by the horn, and *crying* by the voice; with which also accordeth the French word *bachet*, which signifieth a huntsman's horn: So that hue and cry in this sense will properly signify a pursuit by horn and by voice. Which kind of pursuit of robbers by blowing a horn, and by making an outcry, is said to be practised also in Scotland.

And this blowing of a horn, by way of notice or intelligence, in other cases as well as in the pursuit of felons, seemeth to have been in use of very ancient time: for amongst the laws of *Witred* king of Kent, in the year 696, this is one; that "if a stranger go out of the road, and neither shout nor blow a horn, he shall be taken for a thief."

2. Hue and cry is the old common law process after felons, and such as have dangerously wounded any person: what. Hue and cry. And this hath received great countenance and authority by several acts of parliament. 2 *H. H.* 98.

3. To prevent felonies; In walled towns the gates shall be shut from sun setting to sun rising: and none shall lodge without the town, from nine of the clock till day, unless his host will answer for him. In other towns, watches shall be kept: and if a watchman arrest a night-walker, and he disobey and fly, the watchman may make hue and cry. 13 *Ed.* 1. *st.* 2. *c.* 4. Watches to be kept.

4. When any felony is committed, or any person is grievously and dangerously wounded, or any person assaulted and offered to be robbed, either in the day or night; Application to the constable.

night; the party grieved, or any other, may resort to the constable of the vill; and, 1. Give him such reasonable assurance thereof, as the nature of the case will bear. 2. If he knows the name of him that did it, he must tell the constable the same. 3. If he knows it not, but can describe him, he must describe his person, or his habit, or his horse, or such circumstances as he knows, which may conduce to his discovery. 4. If the thing be done in the night, so that he knows none of these circumstances, he must mention the number of the persons, or the way they took. 5. If none of all these can be discovered, as where a robbery, or burglary, or felony is committed in the night, yet they are to acquaint the constable with the fact, and desire him to search in his town for suspected persons, and to make hue and cry after such as may be probably suspected, as being persons vagrant in the same night; for many circumstances may *ex post facto* be useful for discovering a malefactor, which cannot be at first found. 2 *H. H.* 100, 101. 3 *Inst.* 116.

Justice's warrant.

5. For levying hue and cry, altho' it is a good course to have the warrant (A) of a justice of the peace, when time will permit, in order to prevent causeless hue and cry; yet by the frame of the statutes, it is by no means necessary, nor is it always convenient; for the felon may escape before the warrant be obtained, and hue and cry was part of the law, before justices of the peace were first instituted. 2 *H. H.* 99.

Constable to raise the town.

6. And the duty of the constable is, to raise the power of the town, as well in the night as in the day, for the prosecution of the offender. 3 *Inst.* 116.

And to search.

7. And upon hue and cry levied against any person, or where any hue and cry comes to a constable, whether the person be certain or uncertain, the constable may search suspected places within his vill, for the apprehending of the felons. 2 *H. H.* 103.

Breaking doors to search.

8. But tho' he may search suspected places or houses, yet his entry must be by the doors being open; for he cannot break open doors barely to search, unless the person against whom the hue and cry is levied be there, and then it is true he may; therefore in case of such a search, the breaking open the door is at his peril, namely, justifiable, if he be there; not justifiable, if he be not there: But it must be always remembered, that in case of breaking open a door, there must be first a notice given to them within of his business, and a demand of entrance, and

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and a refusal, before the doors can be broken. 2 *H. H.*

103. 2 *Haw.* 86.

9. If the person, against whom the hue and cry is raised, be not found in the constablewick, then the constable shall give notice to the next constable, and he to the next, until the offender be found, or till they come to the sea side. And this was the law before the conquest.

Notice to the next constable.

3 *Inst.* 116.

10. And the officer of the town where the felony was done, as also every officer to whom the hue and cry shall afterwards come, ought to send to every other town round about him, and not to one next town only. And in such cases it is needful to give notice in writing (to the pursuers) of the things stolen, and of the colour and marks thereof, as also to describe the person of the felon, his apparel, horse, and the like, and which way he is gone, if it may be.

And to the next.

Dalt. c. 54.

11. But if the hue and cry be upon a robbery, burglary, manslaughter, or other felony committed, but the person that did the fact is neither known nor describable by person, clothes, or the like, yet such a hue and cry is good, as hath been said, and must be pursued, tho' no person certain be named or described. 2 *H. H.*

What shall be done where the person cannot be described.

103.

And therefore in this case, all that can be done is, for those that pursue the hue and cry, to take such persons as they have probable cause to suspect; as for instance, such persons as are vagrants, or such suspicious persons as come late into their inn or lodgings, and give no reasonable account where they had been, and the like. *id.*

12. By the statute of the 3 *Ed. 1. c. 9.* All shall be ready, and apparelled, at the commandment and summons of sheriffs (or constables, 2 *Inst.* 171.) and at the cry of the country, to sue and arrest felons; on pain of a grievous fine. And if default be found in the lord of the franchise, the king shall take the franchise to himself; and if in the sheriff or other officer, they shall have one year's imprisonment, and shall make a grievous fine.

All persons shall follow the hue and cry.

And by the statute of the 13 *Ed. 1. §. 2. c. 1.* it is likewise enacted, that immediately upon robberies and felonies committed, fresh suit shall be made, from town to town, and from county to county.

And no hue and cry shall be lawful, except it be by horsemen and footmen. 27 *El. c. 13. f. 10.*

And the life of hue and cry is fresh suit. 3 *Inst.* 117

13. If

Breaking doors
to arrest upon
pursuit.

13. If the person pursued by hue and cry be in a house, and the doors are shut, and refused to be opened on demand of the constable, and notification of his business, he may break open the doors; and this he may do in any case where he may arrest, though it be only a suspicion of felony; for it is for the king and commonwealth, and therefore a virtual *non omittas* is in the case: And the same law is, upon a dangerous wound given, and a hue and cry levied upon the offender. 2 H. H. 102.

Killing in the
pursuit.

14. And it seems in this case, that if he cannot be otherwise taken, he may be killed; and the necessity excuseth the constable. 2 H. H. 102.

Arresting an in-
nocent person.

15. If hue and cry be raised against a person certain for felony, though possibly he is innocent; yet the constables, and those that follow the hue and cry, may arrest and imprison him in the common gaol, or carry him to a justice of the peace, to be examined where he was at the time of the felony committed, and the like. 2 H. H. 102.

Arresting a per-
son by descrip-
tion.

16. If the hue and cry be not against a person certain, but by description of his stature, person, clothes, horse, and the like; yet the hue and cry doth justify the constable or other person following it, in apprehending the person so described, whether innocent or guilty: For that is his warrant; it is a kind of process that the law allows of, not usual in other cases, namely, to arrest a person by description. 2 H. H. 103.

Case of arresting
upon hue and cry
levied without
cause.

17. In case of hue and cry once raised and levied, on supposal of a felony committed, though in truth there was no felony committed, yet those that pursue hue and cry, may arrest and proceed, as if so be a felony had been really committed.

And therefore the justification of an imprisonment by a person upon suspicion, and by a person (especially a constable) upon hue and cry levied, do extremely differ; for in the former case, there must be a felony averred to be done, and it is issuable; but in the latter, to wit, upon hue and cry it need not be averred, but the hue and cry levied upon information of a felony is sufficient, though perchance the information were false.

And the reasons hereof are these; 1. Because the constable cannot examine the truth or falsehood of the suggestion of him that first levied it, for he cannot administer to him an oath; and if he should forbear his pursuit of the hue and cry till it be examined by a justice of the peace, the felon might escape, and the pursuit would be lost and

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fruitless. 2. Because the constable is by the several acts of parliament compellable to pursue hue and cry; and he is punishable, and so are those of the vill, if they do it not.

3. Because he that first raiseth a hue and cry, where no felony is committed, that is, he who giveth the false information, is severely punishable by fine and imprisonment, if the information be false.

And therefore if he raise hue and cry upon a person that is innocent, yet they that pursue the hue and cry may justify the imprisonment of that innocent person; and the raiser is punishable: And by the same reason, if he give notice of a felony committed, where there was in truth none.

And here the justification of the imprisonment is mixed, partly upon the hue and cry, and partly upon their own suspicion; and therefore, 1. In respect that it is upon hue and cry there needs no averment, that the felony was done, if the arrest be by that constable that first received the information, and so raised the hue and cry; or if the arrest were made by that constable, or those vills to whom the hue and cry came at the second hand, it must be averred, that such a hue and cry came to them, purporting such a felony to be done. 2. But also inasmuch as the hue and cry neither names nor describes the person of the felon, but only the felony committed, and therefore the arrest of this or that particular person is left to the suspicion and discretion of the constable, or of the people of the second or third vill, he that arrests any person upon such general hue and cry, must aver that he suspected, and shew a reasonable cause of suspicion.

But now by the statute of 7 J. c. 5. the constable, or any that come to his assistance, even in this case of hue and cry, may plead the general issue, and give the whole matter of the justification in evidence; for the pursuit of hue and cry, though performed by others as well as the constable, is principally the act of the constable of the vill, and the others are but as his deputies or assistants, within the precincts of their constablewick. 2 H. H. 101, 2, 3, 4.

18. It seems that they who are taken upon fresh hue and cry, are not bailable, as being to be accounted amongst those persons, who are under a violent presumption of guilt. 2 Haw. 98.

19. By the 13 Ed. 1. st. 2. c. 6. Constables of hundreds shall be chosen, who shall present before justices assigned defaults of the suits of towns, and all such as lodge strangers

Persons taken on hue and cry, how far bailable.

High constables to present those who pursue not hue and cry.

Hue and cry.

strangers in uplandish towns, for whom they will not answer.

Punishment of those who follow not hue and cry.

20. And they which levy not hue and cry, or pursue not upon hue and cry, may be indicted, fined, and imprisoned. 3 *Inst.* 117.

Power of the leet to inquire thereof.

21. And it is an article of the leet, to inquire of hues and cries levied and not pursued. 18 *Ed.* 2.

A. Warrant to levy hue and cry on a robbery having been committed.

Westmorland. { To all constables and other officers, as well in the said county of *Westmorland*, as elsewhere, to whom the execution hereof doth or shall belong.

WHEREAS A. I. of ——— in the county of ——— yeoman, hath this day made information upon oath, before me J. P. esquire, one of his majesty's justices of the peace in and for the said county of W. that on this present ——— day of ——— in the ——— year of the reign of ——— betwixt the hours of three and four in the afternoon of the same day, at a place called ——— in the said county of W. in the king's highway there, two malefactors and felons, to him the said A. I. unknown, in and upon him the said A. I. then and there being in the peace of God and of our lord the king, feloniously did make an assault, and him the said A. I. then and there feloniously did put in great fear and danger of his life, and the sum of ——— of lawful money of Great Britain, of the goods and chattels of him the said A. I. from the person, and against the will of him the said A. I. then and there violently and feloniously did steal, take and carry away; and that one of the said malefactors and felons, to him the said A. I. unknown, is a tall, strong man, and seemeth to be about the age of ——— years, is pitted in the face with the small pox, and hath the scar of a wound under his left eye, and had then on a dark brown riding coat, &c. and did ride upon a bay gelding with a star on his forehead; and the other, &c. And that after the said felony and robbery committed, they the said malefactors and felons, to him the said A. I. unknown, did fly, and withdraw themselves to places unknown, and are not yet apprehended: These are therefore to command you forthwith to raise the power of the towns within your several precincts, and to make diligent search

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search therein, for the persons above described, and to make fresh pursuit and hue and cry after them from town to town, and from county to county, as well by horsemen as by footmen; and to give due notice hereof in writing, describing in such notice the persons and the offence aforesaid, unto every next constable on every side, until they shall come to the sea shore, or until the said malefactors and felons shall be apprehended; and all persons whom you or any of you shall, as well upon such search and pursuit, as otherwise, apprehend or cause to be apprehended, as justly suspected for having committed the said robbery and felony, that you do carry forthwith before some one of his said majesty's justices of the peace in and for the county where he or they shall be so apprehended, to be by such justice examined, and dealt withal according to law. And hercof fail you not respectively, upon the peril that shall ensue thereon. Given under my hand and seal, at _____ in the said county of W. the _____ day of _____ aforesaid, in the year aforesaid.

Hundred.

IN ancient times, before the conquest, it was ordained for the more sure keeping of the peace, that all free born men should cast themselves into several companies, by ten in each company; and that every of those ten men should be surety and pledge for the forthcoming of his fellows. For which cause, these companies in some places were called tythings, as containing the number of ten men with their families. And even as ten times ten do make an hundred, so because it was then also appointed, that ten of these companies should at certain times meet together for their matters of greater weight, therefore that general assembly was, and yet is called an hundred. *Lamb. Const.*

2. If any homicide be committed, or dangerous wound given, in the day time, and the offender escape, the town shall be amerced; and if out of a town, the hundred shall be amerced. *2 Haw. 74.*

3. The hundred shall make good the damages, in the cases of robbery; cutting banks; cutting hop-binds; burning houses, barns, outhouses, hovels, cocks, mows, or stacks of corn, straw, hay, or wood; mines or pits of coal; destroying granaries, or corn intended for exportation;

Hundred whence so called.

Hundred to be amerced for an escape.

Hundred answerable in divers other cases.

portation ; destroying turnpikes ; or works of navigable rivers ; and the like : As may be seen under their proper titles.

Damages how to
be levied.

4. Writs of execution which shall be sued out against the inhabitants of any hundred, on any judgment obtained by virtue of any act of parliament, shall by the sheriff on receipt thereof be produced to two justices, (1 2.) in or near the hundred ; who shall cause a taxation to be made and levied by the constables in 30 days, for paying the plaintiff's costs and damages, and also all such necessary expences as any inhabitants shall have been at in defending such action ; the same being first proved on oath before the said justices ; and the attorney's bill taxed. And the said sums shall be paid to the sheriff by the constables in ten days after the time is expired for collecting ; and by the sheriff, to the persons intitled to receive the same, without any deduction or fee ; all in the same manner, as is directed by the statute of the 8 G. 2. c. 16. in cases of robbery. 22 G. 2. c. 46. f. 34.

Hunting. See *Game*.

Husband. See *Wife*.

Ideots. See *Lunatics*.

Imprisonment. See *Arrest, Commitment*.

Incest. See *Lewdness*.

Inclosures, pulling down.

BY the 13 Ed. 1. f. 1. c. 46. Where sometimes it chan-
ceth, that one having a right to approve, doth then
levy a dyke or an hedge, and some by night, or at another
season, when they suppose not to be espied, do overthrow
the hedge or dyke, and it cannot be known by verdict of
the assize or jury, who did overthrow the hedge or dyke,
and men of the towns near will not indict such as be
guilty of the fact ; the towns near adjoining shall be dis-
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trained to levy the hedge or dyke at their own cost, and to yield damages.

And such person as shall bring an assize thereupon, and have judgment to recover, shall have his damages trebled by the judgment of the court. 3 & 4 Ed. 6. c. 6.

And by the 9 G. 3. c. 29. If any person shall wilfully or maliciously demolish, pull down, or otherwise destroy or damage, any fence made for dividing or inclosing any common, waste, or other lands or grounds in pursuance of any act of parliament, or shall cause or procure the same to be done; he shall be guilty of felony, and transported for 7 years. Prosecution to be commenced in 18 months after the offence committed.

Indictment.

I. *Indictment, what.*

II. *What offences are indictable.*

III. *Within what time an indictment shall be brought.*

IV. *How far several offenders or several offences may be joined in one indictment.*

V. *Whether the grand jury may examine witnesses against the king.*

VI. *How many witnesses are requisite to an indictment.*

VII. *Whether a grand jury may find an indictment specially.*

VIII. *Indictment to be in English.*

IX. *Form of an indictment.*

X. *Charges of an indictment.*

I. *Indictment, what.*

INDICTMENT cometh of the French word *enditer*, and signifieth in law, an accusation found by an inquest of twelve or more upon their oath. And as the

Indictment.

appeal is ever the suit of the party, so the indictment is always the suit of the king, and as it were his declaration; and the party who prosecutes it, is a good witness to prove it. And when such accusation is found by a grand jury, without any bill brought before them, and afterwards reduced to a formed indictment, it is called a *presentment*; and when it is found by jurors returned to inquire of that particular offence only which is indicted, it is properly called an *inquisition*. 1 Inst. 126. 2 Haw. 209.

II. What offences are indictable.

There can be no doubt, but that all capital crimes whatsoever, and also all kinds of inferior crimes of a publick nature, as misprisions, contempts, disturbances of the peace, oppressions, and all other misdemeanors whatsoever of a publick evil example against the *common law*, may be indicted: but no injuries of a private nature, unless they some way concern the king. 2 Haw. 210.

Also it seems to be a good general ground, that wherever a *statute* prohibits a matter of a publick grievance to the liberties and security of a subject; or commands a matter of publick convenience, as the repairing of the common streets of a town; an offender against such statute is punishable, not only at the suit of the party grieved, but also by way of indictment for his contempt of the statute, unless such method of proceeding do manifestly appear to be excluded by it. Yet if the party offending hath been fined to the king, in the action brought by the party (as it is said that he may in every action for doing a thing prohibited by statute); it seems questionable, whether he may afterwards be indicted, because that would make him liable to a second fine for the same offence. 2 Haw. 210.

But if a statute extend only to *private persons*, or if it extend to all persons in general, but chiefly concern disputes of a private nature, as those relating to distresses made by lords on their tenants; it is said that offences against such statute will hardly bear an indictment. 2 Haw. 211.

Also where a statute makes a new offence, and appoints a particular method of proceeding, without mentioning an indictment, it seemeth to be settled at this day, that

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it will not maintain an indictment. 2 Haw. 211. Str. 679.

But lord *Hale* distinguishes upon this, and says, that if a statute prohibit any act to be done, and by a substantive clause gives a recovery by action of debt, bill, plaint, or information, but mentions not an indictment; the party may be indicted upon the *prohibitory clause*, and thereupon fined, but not to recover the penalty; but then it seems the fine ought not to exceed the penalty: but if the act be not prohibitory, but only that if any person shall do such a thing, he shall forfeit so much, to be recovered by action of debt, bill, plaint, or information; then he cannot be indicted for it, but the proceeding must be by action, bill, plaint or information. 2 H. H. 171.

Also, where a statute adds a further penalty, to an offence prohibited by the common law; there can be no doubt, but that the offender may be still indicted, if the prosecutor thinks fit, at the common law. And if the indictment for such offence conclude *against the form of the statute*, and cannot be made good as an indictment upon the statute, it seems to be now settled, that it may be maintained as an indictment at common law. 2 Haw. 211.

A fact amounting to a felony, is not indictable as a trespass. L. Raym. 712.

III. Within what time an indictment shall be brought.

By the 31 El. c. 5. All indictments upon any statute penal, whereby the forfeiture is limited to the king, shall be sued within two years after the offence committed: if the forfeiture is limited to the king and prosecutor, the suit shall be in one year; and in default thereof, the same shall be sued for the king, within two years after that year ended. But where a statute limits a shorter time, the suit shall be brought within such time limited.

But for indictments of felonies and other misdemeanors where there is no forfeiture to the king, or to the king and prosecutor, no time is limited by any statute; but the several acts of general pardon have the effect of a like limitation. The last act of which kind was that of the 20 G. 2. c. 52. for certain offences committed before June 15. 1747.

Indictment.

IV. How far several offenders or several offences may be joined in one indictment.

1. If there be *one offender*, and *several offences* committed by him, as burglary and larceny, they may be contained in one indictment. 2 *H. H.* 173.

But in the case of *K. and Clendon*, *T.* 4 *G.* 2. There was an indictment setting forth, that the defendant made an assault upon *Sarah Beatniff* and *Elizabeth Cooper*, and did them beat, wound, and evil intreat. After verdict for the king, it was moved in arrest of judgment, that these were distinct offences, and required different and distinct judgments, and might require different and distinct fines, and therefore could not be joined in one and the same indictment; but there ought to have been a several indictment for each; and of that opinion was the court, and the judgment was arrested. *Strange* 870. *L. Raym.* 1572. But in the case of the *King* against *Benfield* and *Saunders*, *E.* 33 *G.* 2. the court held this case of *Clendon* not to be law; and said, cannot the king call a man to account for a breach of the peace, because he broke two heads instead of one? It is a prosecution in the king's name, for the offence charged; and not in the nature of an action, where each person injured is to recover separate damages. *Burr. Mansf.* 984.

2. If there be *several offenders* that commit the same offence, though in law they are several offences in relation to the several offenders, yet they may be joined in one indictment; as if several commit a robbery, or burglary, or murder. 2 *H. H.* 173.

So in the aforesaid case of *K. v. Benfield* and *Saunders*, which was for the defendants singing a libellous song against *John* and *Jane Cooke*, the court held, that this being a joint act, done by both, (for they had both joined in in the act of singing the libellous matter), therefore they might well be joined in one and the same indictment. *Burr. Mansf.* 385.

3. And so it is, though the offences are of *several degrees*, but dependant one upon another, as the principal in the first degree, and the principal in the second degree, to wit, present, aiding and abetting the principal, and accessary before or after. 2 *H. H.* 173.

4. Also several persons may be indicted in the same indictment for *several offences of the same nature*, as for keep-

ing disorderly houses; but the indictment ought to set forth that they severally did so. 2 H. H. 173.

And this is only to be understood, where the offences may be joint, as in extortion, maintenance, receiving stolen goods, and the like; and not where the offence is a separate act in each, as in the case of *K. against Phillips* and others, *M. 5 G. 2*. Six were indicted in one indictment for *perjury*, and four of them pleading, were convicted. It was moved in arrest of judgment, that that crime of perjury is in its nature several, and two cannot be indicted together. And by the court, There may be great inconveniences if this is allowed; one may be desirous to have a certiorari, and the other not; the jury on the trial of all, may apply evidence to all, that is but evidence against one: And they cited a case, *T. 6 An. 2*. against *Hodgson* and others, where two were indicted for being scolds, and compared to barratry, and it was held not to lie. And in the principal case judgment was arrested. *Str. 921*.

In like manner, *E. 11 G. K. against Weston* and others. There was an indictment against six jointly and severally for exercising a trade; and quashed, because there ought to be distinct indictments. *Str. 623*.

5. Larcenies committed of several things, though at several times, and from several persons, may be joined in one indictment. 2 H. H. 173.

V. Whether the grand jury may examine witnesses against the king.

Lord Hale says, that the grand jury at the assizes or sessions ought only to hear the evidence for the king, and in case there be probable evidence, they ought to find the bill, because it is but an accusation, and the party is to be put on his trial afterwards. 2 H. H. 157.

Which doctrine is also laid down by chief justice *Pemberton*, in the case of the earl of *Shaftsbury*, *St. Tr. V. 3. p. 415*.

But the learned editor of *Hale's History* observes upon this, that Sir *John Hawles* in his remarks on the said case; *St. Tr. V. 4. p. 183*. unanswerably shews, that a grand jury ought to have the same persuasion of the truth of the indictment as a petty jury, or a coroner's inquest; for they are sworn to present the truth, and nothing but the truth.

Indictment.

And lord *Coke* says, that seeing indictments are the foundation of all, and are commonly found in the absence of the party accused, it is necessary there should be substantial proof. 3 *Inst.* 25.

VI. How many witnesses are requisite to an indictment.

An indictment may be found upon the oath of one witness only, unless it be for high treason, which requires two witnesses. 2 *Haw.* 256. And unless, in any instance it be otherwise specially directed by act of parliament.

VII. Whether the grand jury may find an indictment specially.

It seems to be generally agreed, that the grand jury may not find part of an indictment to be true, and part false; but must either find a true bill or *ignoramus* for the whole; and that if they take upon them to find it specially, or conditionally, or to be true for part only, and not for the rest, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew. 2 *Haw.* 210.

VIII. Indictment to be in English.

All indictments, informations, inquisitions and presentments, shall be in *English*, and be written in a common legible hand, and not court hand; on pain of 50*l.* to him that shall sue in three months. 4 *G.* 2. c. 26. 6 *G.* 2. c. 14.

IX. Form of an indictment.

In order to understand this matter rightly it is judged requisite first to insert the intire form of an indictment, and then to take it in pieces, and explain the several parts of it in their order.

The instance which is chosen is on the statute of stabbing. 1 *J.* c. 8.

The *caption* of the indictment is no part of the indictment itself, but is the style or preamble, or return that is made from an inferior court to a superior, from whence a certiorari issues to remove; or when the whole record is made up in form; for whereas the record of the indictment

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ment, as it stands upon the file in the court where it is taken, is only thus, *The jurors for our lord the king upon their oath present*; when this comes to be returned upon a certiorari, it is more full and explicit, as follows: 2 *H. H.* 166.

Westmorland. **A**T the general quarter sessions of the peace holden at Appleby in and for the county aforesaid, the seventh day of April in the first year of the reign of our sovereign lord George the third of Great Britain, France, and Ireland, king, defender of the faith, and so forth, Before J. P. and K. P. esquires, and others their associates, justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, by the oath of ———— good and lawful men of the county aforesaid, sworn and charged to inquire for our said lord the king, and for the body of the county aforesaid, it is presented;

That John Armstrong late of Appleby in the county aforesaid, yeoman, not having God before his eyes, but being moved and seduced by the instigation of the devil, on the thirtieth day of March in the first year of the reign of our said sovereign lord George the third of Great Britain, France, and Ireland, king, defender of the faith, and so forth, at the hour of nine in the afternoon of the same day, with force and arms, at Appleby aforesaid in the county aforesaid, in and upon one George Harrison in the peace of God and of our said lord the king then and there being (the aforesaid George Harrison not having any weapon then drawn, nor the aforesaid George Harrison having first stricken the said John Armstrong) feloniously did make an assault; and that the aforesaid John Armstrong, with a certain drawn sword of the value of five shillings, which he the said John Armstrong in his right hand then and there had and held, the said George Harrison in and upon the right side of the belly near the short ribs of him the said George Harrison (the aforesaid George Harrison as aforesaid then and there not having any weapon drawn, nor the aforesaid George Harrison then and there having first stricken the said John Armstrong) then and there feloniously did stab and thrust, giving unto the said George Harrison then and there with the sword aforesaid, in form aforesaid; in and upon the right side of the belly near the short ribs of him the said George Harrison one mortal wound of the breadth of one inch, and of the depth

Indictment.

of nine inches; of which said mortal wound, he the said George Harrison then and there instantly died: And so the jurors aforesaid upon their oath aforesaid do say, that the said John Armstrong him the said George Harrison on the aforesaid thirtieth day of March in the year aforesaid, at Appleby aforesaid in the county aforesaid, in manner and form aforesaid, feloniously did kill; against the peace of our said lord the now king, his crown and dignity, and against the form of the statute in such case made and provided.

Westmorland] The name of the county must be in the margin, or repeated in the body of the caption. 2 H. H. 166.

At the general quarter sessions of the peace] The court where the indictment is made, must be expressed; otherwise the caption is erroneous. 1 H. H. 166. 2 Haw. 252.

Holden at Appleby in and for the county aforesaid] It must appear where the sessions was held; and that the place, where it was held, is within the extent of the commission. 2 H. H. 166.

The seventh day of April in the first year of the reign of our sovereign lord George the third] It hath been adjudged, that if the caption of the indictment describe the sessions holden in the time past, and not in the time present; or as holden on such a day in such a year of the king, without ascertaining what king, it is insufficient. But it seems to be agreed, that it is sufficient to express the year of the king, without adding that of our lord. 2 Haw. 255.

The seventh day] Figures to express numbers are not allowable in an indictment; but numbers must be expressed in words. 2 H. H. 170. Cr. Cir. 109. Andr. 137. H. 11 G. 2. K. and Haddock. Or at least in Roman numerals. Str. 261. H. 6 G. K. and Philips.

Before J. P. and K. P. esquires, and others their associates] It is not necessary to name all the justices, but only so many as are enabled to hold a sessions, and the rest may be supplied by the words *and others their associates*. 2 H. H. 167.

And altho' no sessions can be held without one of the justices being of the *quorum*, yet in the caption there need not be any mention which of them, or whether any of them, are of the *quorum*, for it is sufficient if *de facto* the sessions

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sessions be held before him or them that are of the *quorum*, altho' not so mentioned, and so is the usual course. 2 *H. H.* 167.

And also to hear and determine, &c.] These words are necessary, because without this clause (by the commission) they cannot proceed by indictment. 2 *H. H.* 166. *Str.* 442.

By the oath] If the caption concludes that *it is presented* without saying *on their oath*, it shall be quashed; for their presentment must be upon oath, and so returned. 2 *H. H.* 168.

By the oath of——] It must name the jurors that presented the offence; and therefore by the oath of *A. B. C. D.* and others, is not good; for it may be the presentment was by a less number than 12, or that some one of them was incapacitated who might influence all the rest, as for instance a person outlawed; in which case the indictment may be quashed by plea. 2 *H. H.* 167.

Good and lawful men of the county aforesaid] These words also, lord *Hale* saith, are necessary. 2 *H. H.* 167. But Mr. *Hawkins* says, they have been often over-ruled; because all men shall be intended to be honest and lawful, till the contrary appear. 2 *Haw.* 215.

Sworn and charged to inquire for our said lord the king, and for the body of the county aforesaid] These words also seem requisite to be inserted. 2 *H. H.* 167. But yet do not seem to be absolutely necessary. *L. Raym.* 710.

It is presented; that John Armstrong, late of Appleby in the county aforesaid, yeoman] The name of the party indicted regularly ought to be inserted, and inserted truly in every indictment. 2 *H. H.* 175.

But the inhabitants of a parish, may be indicted for not repairing the highway, although no person is particularly named. *Wood, b. 4. c. 5.*

It is said that no person indicted can take any advantage of a mistaken surname in the indictment, notwithstanding such surname hath no manner of affinity with its true one, and he was never known by it. 2 *Haw.* 230, 1, 2, 3. 2 *H. H.* 176.

But the mistake of the christian name is pleadable, and the party shall be dismissed from that indictment. 2 *H. H.* 176.

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But the safest way is to allow his plea of *misnomer*, both as to his surname and as to his christian name, for he that pleads *misnomer* of either, must in the same plea set forth what his true name is, and then he concludes himself, and if the grand jury be not discharged, the indictment may presently be amended by the grand jury, and returned according to the name he gives himself. 2 H. H. 176.

Also an indictment naming the defendant by two christian names is not good. L. Raym. 562.

If the *county* is in the margin, and the indictments sets forth the fact to be done at such a place in the county *aforesaid*, it is good, for it refers to the county in the margin; but if there be two counties named, one in the margin, and another in the addition of any party, or in the recital of an act of parliament the fact laid at such a place in the county *aforesaid*, vitiates the indictment, because two counties are named before, and therefore it is uncertain to which it refers. Crown Cir. 115, 116.

By the 1 H. 5. c. 5. In all indictments on which process of outlawry lieth, to the names of the defendants *additions* shall be made of their estate, or degree, or mystery, and of the towns, or hamlets, or places, and counties where they were or be conversant.

But altho' the defendant be indicted by a wrong name or addition, or with no addition, yet if he appear, and plead not guilty, without taking advantage of that defect, he shall never alledge the *misnomer* or want of addition to stop his trial or judgment; for by such his appearance, and pleading to issue, the indictment is affirmed, and the *misnomer* or want of addition salved. 2 H. H. 176.

And if several persons be indicted for one offence, *misnomer* or want of addition of one, quasheth the indictment only against him, and the rest shall be put to answer; for they are in law as several indictments. 2 H. H. 177.

And it is the common practice, where an indictment is insufficient, while the grand jury is before the court, to amend it by their consent, in a matter of form as the name or addition of the party, or the like. 2 Haw. 245.

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On the thirtieth day of March in the first year of the reign, &c.] No indictment can be good, without precisely shewing a certain *day* of the material facts alledged in it. 2 *Haw.* 235.

And if the offence be done in the night, before midnight, the indictment shall suppose it to be done in the day before; and if it happen after midnight, then it must say, it was done that day after. *Lamb.* 492

And altho' the day be inserted, yet if the *year* is not likewise inserted, the indictment is insufficient. 2 *H. H.* 177.

But where an indictment charges a man with a bare omission, as the not scouring such a ditch, it is said, that it needs not shew any time. 2 *Haw.* 236.

It is most regular to set forth the year, by shewing the year of the king; yet this may be dispensed with for special reasons, if the very year be otherwise sufficiently expressed. 2 *Haw.* 236.

And if it say, on such a day last past, without shewing in what year, that is good enough; for the certainty may be found out by the style of the sessions. *Lamb.* 491.

But tho' the day or year be mistaken in the indictment, yet if the offence were committed in the same county, tho' at another time, the offender ought to be found guilty: but then it may be requisite, if any escheat or forfeiture of land be conceived in the case, for the petit jury to find the true time of the offence committed; and therefore it is best in the indictment to set down the time as truly as can be, tho' it be not of absolute necessity to the defendant's conviction. 2 *H. H.* 179.

And this the rather, because the jury are to find the indictment upon their oaths. *Dalt. c.* 184.

Upon which ground, namely, because the jury are sworn to present the truth, it is best to lay all the facts in the indictment as near to the truth as may be; and not to say, in an indictment for a small assault (for instance) wherein the person assaulted received little or no bodily hurt, that such a one *with swords, staves, and pistols, beat, bruised and wounded him, so that his life was greatly endangered*; nor to say in an indictment for an highway being obstructed, that the king's subjects cannot go there-

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on, without manifest danger of their lives; and the like. Which kind of words, as they are not at all necessary, so they may stagger an honest man upon his oath, to find the fact as so laid.

At the hour of nine in the afternoon of the same day] It is not necessary to mention the hour, in an indictment. 2 Haw. 235.

With force and arms] By the 37 H. 8. c. 8. it is enacted, that whereas it had been commonly used in indictments, to put in the same the words *vi & armis*, and in divers of the same indictments to declare the manner of the force and arms, viz. *baculis, cultellis, arcubus, & sagittis*, or such like, where in truth the parties had no manner of such weapons at the time of the offence committed; therefore for the future, these words, or such like, shall not of necessity be put in any inquisition or indictment.

But yet where such words are proper and pertinent, it is safe and adviseable to insert them, if it be to no other purpose than to aggravate the offence. 2 Haw. 242.

At Appleby aforesaid, in the county aforesaid] No indictment can be good, without expressly shewing some place wherein the offence was committed, which must appear to have been within the jurisdiction of the court. 2 Haw. 236.

But a mistake of the place will not be material upon the evidence, on not guilty pleaded, if the fact be proved at some other place in the same county. 2 Haw. 237.

And it is not sufficient that the county be expressed in the margin, but the vill where the offence was committed must be alledged to be in the county named in the margin, or, *in the county aforesaid*, which seems to be sufficient where but one county is named before, but to be uncertain where a county is named in the body of the indictment different from that in the margin. 2 Haw. 220. 2 H. H. 180.

In and upon one George Harrison] Wherever the person injured is known to the jurors, his name ought to be put in the indictment. 2 Haw. 232.

But if they know not his name, an indictment for the murder of a person unknown, or for stealing the goods of a person unknown, is good, 2 H. H. 181.

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Also there is no need of an addition of the person upon whom the offence is committed, unless there be a plurality of persons of the same name; neither then is it essential to the indictment, tho' sometimes it may be convenient for distinction sake to add it. 2 H. H. 182.

In the peace of God, and of our said lord the king, then and there being] It is usual to alledge this, but not necessary, and possibly not true, for he might be breaking the peace at the time. 2 H. H. 186.

The aforesaid George Harrison not having any weapon then drawn, nor the aforesaid George Harrison having first stricken the said John Armstrong] An indictment grounded upon an offence made by act of parliament, must by express words bring the offence within the substantial description made in the act of parliament; and those circumstances mentioned in the statute to make up the offence, shall not be supplied by the general conclusion *against the form of the statute*. 2 H. H. 170.

And so it is, if an act of parliament oust clergy in certain cases, as murder *of malice forethought*, robbery *in or near the highway*, though the offences themselves were at common law, yet because at common law within clergy, they shall not be ousted of clergy, though convicted, unless these circumstances, as *of malice forethought*, or *near the high way*, be expressed in the indictment. 2 H. H. 170.

But there is no necessity in an indictment on a publick statute, to recite such statute; for the judges are bound *ex officio* to take notice of all publick statutes. 2 Haw. 245.

Yet if the prosecutor take upon him to recite it, and materially vary from a substantial part of the purview of the statute, and conclude *against the form of the statute aforesaid*, he vitiates the indictment. 2 Haw. 246.

Also it seems to be generally agreed, that a misrecital of the place or day at which the parliament was holden, vitiates an indictment. 2 Haw. 246.

And it hath been adjudged, that a misrecital of the title of a statute is fatal. 2 Haw. 247.

But there is no need to alledge in an indictment, that the defendant is not within the benefit of the provisoes of the statute; although the same may be necessary in a *conviction*: for since no plea can be admitted to a conviction, and the defendant can have no remedy against it, but from an exception to some defect appearing in the face of it,
and

Indictment.

and all the proceedings are in a summary manner, it is but reasonable that such a conviction should have the highest certainty. 2 Haw. 250. 2 H. H. 170, 1.

Feloniously did make an assault] There are several words of art which the law hath appropriated for the description of the offence, which no circumlocution will supply; as *feloniously*, in the indictment of any felony; *burglariously*, in an indictment of burglary; and the like. 2 H. H. 184.

And if a man be indicted that he *stole*, and it is not said *feloniously*, this indictment imports but a trespass. 2 H. H. 172.

With a certain drawn sword] Yet if the party were killed with another weapon, it maintains the indictment; but if it were with another kind of death, as poisoning, or strangling, it doth not maintain the indictment upon evidence. 2 H. H. 185.

Of the value of five shillings] Regularly it ought to set forth the price of the sword or weapon, or else say of no value; for the weapon is a deodand forfeited to the king, and the township shall be charged for the value, if delivered to them; but this seems not to be essential to the indictment. 2 H. H. 185.

Which he the said John Armstrong in his right hand then and there had and held] It must shew in what hand he held his sword. 2 H. H. 185.

In and upon the right side of the belly near the short ribs of him the said George Harrison] There must be a certainty of the offence committed, and nothing material shall be taken by intendment or implication; but the special manner of the whole fact ought to be set forth with certainty. 2 Haw. 225, 227.

And therefore in the case of murder, it ought to shew in what part of the body the person was wounded; and therefore if it be on his arm, or hand or side, without saying whether right or left, it is not good. 2 H. H. 185.

If theft be alledged in any thing, the indictment must set forth the value of the thing stolen; that it may appear, whether it be grand or petit larceny. 2 H. H. 183.

In like manner, an indictment that the defendant took and carried away such a person's goods and chattels, with-

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out shewing what in certain, as one horse, one cow, is not good. 2 H. H. 182.

An indictment that the defendant is a common highwayman, a common defamer, a common disturber of the peace, and the like, is not good; because it is too general, and contains not the particular matter wherein the offence was committed. 2 H. H. 182.

In like manner an indictment for divers scandalous, threatening and contemptuous words, spoken of a justice of the peace, is not good, but ought to set forth the words in special. Str. 699.

An indictment for disobeying an order of justices, must find positively, that such an order was made, and not by way of recital, *that whereas*—— L. Raym. 1363.

But in an indictment on a conviction, it is not necessary to set forth the conviction at large, but only shortly that such a one was before such and such justices convicted, according to the form of the statute, and thereupon a warrant was issued, &c. L. Raym. 1196.

Then and there feloniously did stab and thrust] In an indictment it is best, and often necessary, to repeat the time and place, to the several parts of the fact. 2 H. H. 178.

Thus in an indictment of murder or manslaughter, as well the day and place of the stroke, or other act done, as of the death, must be expressed; the former, because the escheat or forfeiture of lands relates thereto; the latter, because it must appear that the death was within the year and day after the stroke. 2 H. H. 179.

One mortal wound of the breadth of one inch, and of the depth of nine inches] Regularly the length and depth of the wound is to be shewed; but this is not necessary in all cases, as namely, where a limb is cut off so it may be also a dry blow. 2 H. H. 186.

But though the manner and place of the hurt and its nature be requisite, as to the formality of the indictment, and it is fit to be done as near the truth as may be; yet if upon evidence it appear to be another kind of wound in another place, if the party died of it, it is sufficient to maintain the indictment. 2 H. H. 186.

Against

Indictment.

Against the peace of our said lord the king] An indictment without concluding against the peace, is insufficient, tho' it be but for using a trade not having been an apprentice; for every offence against a statute is against the peace, and ought so to be laid. 2 H. H. 188.

Also an indictment that concludes against the peace, and faith not *of our lord the king*, is insufficient. 2 H. H. 188.

His crown and dignity] An indictment need not conclude against his crown and dignity, though it be usual in many indictments. 2 H. H. 188.

And against the form of the statute in such case made and provided] Regularly, if a statute only make an offence, or alter an offence from one crime to another, as making a bare misdemeanor to become a felony, the indictment for such new made offence, or new made felony, must conclude against the form of the statute, or otherwise it is insufficient. 2 H. H. 192.

But if a man be indicted for an offence, which was at common law, and concludes against the form of the statute, but in truth it is not brought by the indictment within the statute, it shall be quashed and the party shall not be put to answer it as an offence at common law. 2 H. H. 171.

And if an offence were felony at common law, but a special act of parliament ousts the offender of some benefit that the common law allowed him, when certain circumstances are in the fact; though the body of such indictment must express those circumstances, according as they are prescribed in the statute, yet the indictment need not conclude against the form of the statute: Thus on the statute of the 8 El. c. 4. in case of pick-pockets, the body of the indictment must bring them within the express purview of the statute, or otherwise they shall have the benefit of clergy; but it need not conclude against the form of the statute, neither is it usual in such cases, for it was felony before, and the statute doth not give a new punishment, nor make it to be a crime of another nature, but only takes away clergy. But yet, if it should conclude in such case against the form of the statute, it would not vitiate the indictment, but would be only surplusage. 2 H. H. 190.

If an act of parliament, making an offence, be but temporary, and made perpetual by another statute, the indictment

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indictment concluding against the form of the *statute*, is good. 2 H. H. 173.

If the former statute be discontinued, and revived by another statute, the best way is to conclude against the form of the *statutes*; though there is good opinion, that it is good enough to conclude against the form of the first statute. 2 H. H. 173.

If one statute be relative to another, as where the former makes the offence, the latter adds a penalty; the indictment ought to conclude against the form of the *statutes*. 2 H. H. 173.

X. Charges of an indictment.

By the 10th & 11th W. c. 23. No clerk of assize, clerk of the peace, or other person, shall take any fee of any person bound over to give evidence against a traitor or felon, for the discharge of his recognizance; nor shall take more than 2 s. for drawing any bill of indictment against any such felon: On pain of 5l. to the party grieved, with full costs. And if he draw a bill defective, he shall draw a new one *gratis*, on the like pain.

For the drawing of indictments for other misdemeanors, not being treason or felony, no fee is limited by any statute: And therefore the same dependeth upon the custom and ancient usage.

Condition of a recognizance to prefer a bill of indictment.

THE condition of this recognizance is such, That if the above bound A. I. shall personally appear at the next general quarter sessions of the peace to be holden at——in and for the said county, and then and there prefer a bill of indictment against A. O. late of——yeoman, for the felonious taking and carrying away of——the property of——and shall then and there give evidence concerning the same, to the jurors who shall inquire thereof on the part of our said lord the king: And in case the same be found a true bill, Then if the said A. I. shall personally appear before the jurors who shall pass upon the trial of the said A. O. and give evidence upon the said indictment, and not depart without leave of the court, Then this recognizance to be void.

Indictment.

Condition of a recognizance to answer to an indictment.

THE condition of this recognizance is such, That if the above bound A. O. shall personally appear at the next general quarter sessions of the peace to be holden at——— in and for the said county, then and there to answer to an indictment to be preferred against him by A. I. of——— yeoman, for assaulting and beating him the said A. I. and not depart without leave of the court, Then this recognizance to be void.

Infants.

Infant, who.

Committing a crime under 14.

1. **B**Y an infant, or minor, is meant any one who is under the age of 21 years. 1 *Inst.* 2.

2. It is said generally, that those who are under a natural disability of distinguishing between good and evil, as infants under the age of 14 years, which is called the age of discretion, are not punishable by any criminal prosecution whatsoever. But this must be understood with some allowance; for if it appear by the circumstances, that an infant under the age of discretion, could distinguish between good and evil, as if one of the age of nine or ten years, kill another and hide the body, or make excuses, or hide himself, he may be convicted and condemned, and forfeit as much as if he were of full age: But in such case the judges will in prudence respite the execution, in order to get a pardon; and it is said, that if an infant apparently wanting discretion, be indicted and found guilty of felony, the justices themselves may dismiss him without a pardon. And in general it must be left to the discretion of the judge, upon the circumstances of the case, how far an infant, under that age, is *capax doli*, or hath knowledge to discern betwixt good and evil. *Hale's Pl.* 43. 1 *Haw.* 2. 1 *H. H.* 18.

A remarkable instance of this kind we have in the case of *William York*. At Bury summer assizes 1748, *William York*, a boy of ten years of age was convicted before lord chief justice *Willes*, for the murder of a girl of about five years of age; and received sentence of death. But the chief justice, out of regard to the tender years of the pri-

prisoner, respited execution, till he should have an opportunity of taking the opinion of the rest of the judges, whether it was proper to execute him or not, upon the special circumstances of the case; which he reported to the judges as follows. The boy and girl were parish children, but under the care of a parishioner, at whose house they were lodged and maintained. On the day the murder happened, the man of the house and his wife went out to their work early in the morning, and left the children in bed together. When they returned from work the girl was missing; and the boy being asked what was become of her, answered, that he had helped her up, and put on her clothes, and that she was gone he knew not whither. Upon this, strict search was made in the ditches and pools of water near the house, from an apprehension that the child might have fallen into the water. During this search, the man under whose care the children were, observed that a heap of dung near the house had been newly turned up. And upon removing the upper part of the heap he found the body of the child, about a foot's depth under the surface, cut and mangled in a most barbarous and horrid manner. Upon this discovery, the boy, who was the only person capable of committing the fact, that was left at home with the child, was charged with the fact which he stiffly denied. When the coroner's jury met, the boy was again charged, but persisted still to deny the fact. At length being closely interrogated, he fell to crying, and said he would tell the whole truth. He then said, that the child had been used to foul herself in bed; that she did so that morning (which was not true, for the bed was searched and found to be clean); that thereupon he took her out of the bed and carried her to the dung heap; and with a large knife, which he found about the house, cut her in the manner the body appeared to be mangled, and buried her in the dung heap; placing the dung and straw that was bloody under the body, and covering it up with what was clean; and having so done, he got water and washed himself as clean as he could. The boy was the next morning carried before a neighbouring justice, before whom he repeated his confession, with all the circumstances he had related to the coroner and his jury. The justice very prudently deferred proceeding to a commitment, till the boy should have an opportunity of recollecting himself. Accordingly he warned him of the danger he was in, if he should be thought guilty of the fact he stood charged

with, and admonished him not to wrong himself ; and then ordered him into a room, where none of the crowd that attended should have access to him. When the boy had been some hours in this room, where victuals and drink were provided for him, he was brought a second time before the justice, and then he repeated his former confession : Upon which he was committed to gaol. On the trial, evidence was given of the declarations before mentioned to have been made before the coroner and his jury, and before the justice ; and of many declarations to the same purpose, which the boy made to other people after he came to gaol, and even down to the day of his trial. For he constantly told the same story in substance, commonly adding that the devil put him upon committing the fact. Upon this evidence, with some other circumstances tending to corroborate the confession, he was convicted. Upon this report of the chief justice, the judges having taken time to consider of it, unanimously agreed, 1. That the declarations stated in the report were evidence proper to be left to the jury. 2. That supposing the boy to have been guilty of this fact, there are so many circumstances stated in the report which are undoubtedly tokens of what lord chief justice *Hale* somewhere calleth a *mischievous discretion*, that he is certainly a proper object for capital punishment, and ought to suffer. For it would be of very dangerous consequence to have it thought, that children may commit such atrocious crimes with impunity. There are many crimes of the most heinous nature, such as in the present case the murder of young children, poisoning parents or masters, burning houses, and the like, which children are very capable of committing, and which they may in some circumstances be under strong temptations to commit ; and therefore, tho' the taking away the life of a boy of ten years old may savour of cruelty, yet as the example of this boy's punishment may be a means of deterring other children from the like offences, and as the sparing this boy merely on account of his age will probably have a quite contrary tendency,——in justice to the publick, the law ought to take its course, unless there remaineth any doubt touching his guilt. In this general principle all the judges concurred. But two or three of them, out of great tenderness and caution, advised the chief justice to send another reprieve for the prisoner ; suggesting that it might possibly appear on further inquiry, that the boy had taken this matter upon himself, at the instigation of
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some person or other, who hoped by this artifice to screen the real offender from justice. Accordingly, the chief justice did grant one or two more reprieves; and desired the justice who took the boy's examination, and also some other persons in whose prudence he could confide, to make the strictest inquiry they could into the affair, and make report to him. At length he receiving no further light, determined to send no more reprieves, and to leave the prisoner to the justice of the law at the expiration of the last. But before the expiration of that reprieve, execution was respited till further order, by warrant from one of the secretaries of state. And at the summer assizes 1757, he had the benefit of his majesty's pardon, upon condition of his entering immediately into the sea service. *Fest. 70.*

3. But within seven years of age, there can be no guilt Under seven. whatsoever of any capital offence; the infant may be chastized by his parents or tutors, but cannot be capitally punished, because he cannot be guilty; and if he be indicted for such an offence as is in its nature capital, he must be acquitted. *1 H. H. 19, 20.*

4. An infant under 14, is presumed by law, unable to Committing a commit a rape, and therefore it seems cannot be guilty of rape. it; and though in other felonies *malitia supplet aetatem* in some cases, yet it seems as to this fact the law presumes him impotent, as well as wanting discretion. *1 H. H. 630.*

5. An infant may be guilty of forcible entry, in respect Forcible entry. of personal actual violence. *1 Haw. 147.* And the justices may fine him therefore: But yet it shall be good discretion in the justices of the peace, to forbear the imprisonment of such infant. *Dalt. c. 126.*

Because it is said, that he shall not be subject to corporal punishment, by force of the general words of any statute, wherein he is not expressly named. *1 Haw. 147.*

6. But if one who wants discretion, commit a trespass, Shall be liable to damages for trespass. against the person or possession of another, he shall nevertheless be compelled in a civil action to give satisfaction for the damage. *1 Haw. 2, 1 H. H. 15, 16.*

7. An infant may bring an appeal, although it take May bring an appeal. from the defendant the benefit of waging battle; but he must prosecute such appeal by a guardian. *2 Haw. 161, 162.*

An appeal likewise may be brought against him. *2 Haw. 168.*

Cannot be an approver.

8. An infant under the age of discretion cannot be an approver; because he cannot take the oath requisite in that case. 2 *Haw.* 205.

How far he may be a witness.

9. In case of rape committed upon a child of 12 years old, such child may be sworn as evidence; yea if she be under that age, if it appear to the court that she knows and considers the obligation of an oath, she may be sworn. And in case of evidence against witches, an infant of nine years old was sworn. 1 *H. H.* 634. *Dalt.* 378.

Whether he may be a juror.

10. An infant before 21 years of age shall not be sworn in an inquest. 7 *W. c.* 32. *f.* 4. 1 *Inst.* 172.

Woman's age of dower, marriage, and chusing guardian.

11. A woman at 9 years of age may have dower; at 12 may consent to marriage; and at 14 is of age of discretion, and may chuse a guardian. 1 *Inst.* 78.

Man's age of allegiance, marriage, and chusing guardian.

12. A man is of age at 12 years to take the oath of allegiance in the torn or leet; and at 14 is of age of discretion, may consent to marriage and chuse his guardian. 1 *Inst.* 78.

Cannot make a deed.

13. At 21, and not before, persons may bind themselves by any deed, and alien lands, goods and chattels. 1 *Inst.* 171.

Nor enter into recognizance.

14. Upon which ground infants may not enter into recognizance to keep the peace, or to be of the good behaviour, but their sureties only.

May contract for necessities.

15. But an infant may bind himself to pay for his necessary meat, drink, apparel, physick, and such like; and also for his good teaching or instruction, whereby he may profit himself afterwards; but if he binds himself in an obligation or other writing, with a penalty for the payment of any of these, that obligation shall not bind him. 1 *Inst.* 172.

And in *Earl's* case, 1 *Salk.* 387. it is said, that an infant may buy necessities, but cannot borrow money to buy; for he may misapply the money, and therefore the law will not trust him, but at the peril of the lender, who must lay it out for him, or see it laid out.

And it shall be only for necessities, and not for matters of luxury or extravagance; and if after he comes of age he is prevailed on, by surprize or other undue means, to give security, yet a court of equity on consideration of circumstances will relieve. 2 *Atk.* 35.

May present to a benefice.

16. Also other things of necessity shall bind him, as a presentation to a benefice; for otherwise the lapse shall incur against him. 1 *Inst.* 172.

17. And

Infants.

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17. And infants seised of estates in trust, or by way of mortgage, may make conveyances thereof, as the courts of chancery or exchequer shall direct. 7 *An. c.* 19. 4 *G.* 3. c. 16.

May convey in court of equity

18. And they may surrender leases in the courts of chancery or exchequer, in order to renew the same. 29 *G.* 2. c. 31.

May surrender in a court of equity.

19. Also an infant hath, without consent of any other, capacity to purchase, for it is intended for his benefit; and at his full age, he may either agree thereunto, and perfect it, or without any cause to be alledged, waive, or disagree to the purchase: And so may his heirs after him, if he agree not thereunto after his full age. 1 *Inst.* 2.

May purchase.

20. The common law seems not to have determined precisely, at what age one may make a testament of a personal estate: It is generally allowed, that it may be made at the age of 18, and some say under, for the common law will not prohibit the spiritual court in such cases. 1 *Inst.* 89. 1 *H. H.* 17.

May make a will.

The age of discretion is 14; and therefore it may seem that one may make a testament of personal estate at that age.

21. A person is of age to be an executor at 17; and an administration of any one during the minority of an infant, ceaseth when the infant comes to that age. 5 *Co. Pigot's* case. 1 *H. H.* 17.

May be an executor.

22. Any person having child or children, under 21 years of age, and not married, may by deed or will attested by two witnesses, dispose of the custody and tuition of such child or children, until they shall be of the age of 21, or for a lesser time; and this, whether such parent be within or above the age of 21. 12 *C.* 2. c. 24. s. 8.

May bequeath the tuition of his children.

23. An infant cannot answer but by guardian; but he may sue either by his next friend or by guardian. 3 *Salk.* 196.

May sue by prochein amy.

24. If an infant of the age of 17 years release a debt, this is void; but if an infant make the debtor his executor, this is a good release in law of the action. 1 *Inst.* 264.

In what case he may release a debt.

25. By the 5 *El. c.* 4. Persons above the age of 10 years by their own consent and agreement, may be bound apprentices.

At what age he may be bound apprentice.

And by the 3 *El. c.* 5. Any person, above seven years old, may be bound apprentice to the sea-service.

Infants.

By the 43 *El. c. 2.* No age is limited for the binding of parish apprentices; so that it seemeth they may be bound at the age of seven, when they cease to be nurse children, and consequently may be taken from the mother.

Infant apprentice embezzling goods.

26. It shall be felony without benefit of clergy, to steal goods to the value of 40 s. out of an house, though the house be not broken open; but this shall not extend to apprentices under 15 years of age. 12 *An. B. 1. c. 7.*

Infant servant embezzling goods.

27. Servants above the age of 18, imbezling their master's goods to the value of 40 s. shall be punished as felons. 21 *H. 8. c. 7.*

Information.

Information at the suit of the king.

1. Informations are of two kinds; 1: Such as are merely at the suit of the king: And, 2. Such as are partly the suit of the king, and partly the suit of the party; which are commonly called informations *qui tam*, from those words in the information when the proceedings were in *Latin*, *qui tam pro domino rege quam pro seipso*, &c. 2 *Haw. 259.*

Private action upon a statute.

2. Of near affinity to an information *qui tam*, is an action upon the statute: which is either a *private* action, which is, when an action is given upon a statute to the king, and to the *party* grieved only; or, a *popular* action, which is, where the action is given to the *people* in general, that is, to any one that will sue for the king, and for himself.

In what case the king may have the whole penalty.

3. But if the king commenceth his suit before the informer, the king shall have the whole forfeiture (because in such case he also is the informer); and he may, before the informer begins his suit, release the penalty to the offender, and bar all others; but if after a popular action is brought by the informer, the king's attorney will enter *ulterius non vult prosequi*, the informer may prosecute for his part. *Wood. b. 4. c. 4.*

In what cases an information will lie.

4. Where a matter concerns the publick government, and no particular person is intitled to an action, there an information will lie. 18 *El. c. 5. f. 1.* 1 *Salk. 374.*

5. An information lies, at the *common law*, for a great variety of crimes less than capital, as batteries, cheats, perjuries, riots, extortions, nuisances, contempts, and such like; and also it lies in very many cases by *statute*, wherein the offender is liable to a fine or other penalty. *Finch. 340. 2 Haw. 260.*

6. And in general, it seems that of common right an information *at the suit of the king*, or an action in the nature thereof, may be brought for offences against statutes, whether they be mentioned by such statutes or not, unless other methods of proceeding be particularly appointed, by which all others are impliedly excluded. *2 Haw. 260.*

7. But an information or action *qui tam* will not lie on any statute, which prohibits a thing as being an immediate offence against the publick good in general, under a certain penalty, unless the whole or part of such penalty be expressly given to him who will sue for it; because otherwise it goes to the king, and nothing can be demanded by the party: But where such statute gives any part of such penalty to him who will sue for it by action or information, any one may bring such action or information, and lay his demand, *as well for our lord the king, as for himself.* *2 Haw. 256*

8. Also where a statute prohibits or commands a thing, the doing or omission whereof is an immediate danger to the party, and also highly concerns the peace, safety, or good government of the publick, or the honour of the king, or of his supreme courts of justice, it seems to be the general opinion, that the party grieved may bring his action *qui tam* on such statute. *2 Haw. 265.*

9. By the 31 El. c. 5. *All actions, suits, bills, indictments, or informations on any penal statute, whereby the forfeiture is limited to the king, shall be brought within two years after the offence committed; if limited to the king, and to any other who shall prosecute, then within one year; and in default of such prosecution, then to be brought for the king, in two years after that year ended. Provided, that if they are limited by statute to be brought within shorter time, then they shall be brought within such time limited.* s. 5, 6.

In what time it shall be brought.

On any penal statute] But if an offence prohibited by a penal statute, be also an offence at common law; the prosecution of it, as of an offence at common law, is no way restrained hereby. *2 Haw. 272.*

To any other who shall prosecute] That is, to a common informer; and therefore the party grieved is not within the restraint of this statute, but may sue in the same manner as before. 2 *Haw.* 272.

Two informa-
tions on the
same day.

10. If two informations be exhibited on the same day, for the same offence, they mutually abate one another. 2 *Haw.* 275.

In what county
it shall be laid.

11. By the 21 J. c. 4. *All offences against any penal statute, for which any common informer may ground a popular action, bill, plaint, suit, or information, before the judges of assize, or justices of the peace in their general or quarter sessions (having power to hear and determine the same), shall be prosecuted in the county where they were committed, and not elsewhere: and if the offence is not proved to have been committed in the same county the defendant shall be found not guilty.* s. 1, 2.

Provided that informations, suits, or actions, against popish recusants, or persons charged with maintenance, champerty, or buying of titles, may be laid in any county. s. 5.

Against any penal statute] *H. 8 W. K. and Gaul.* Holt Ch. J. said, ten judges had agreed that this statute doth not extend to any offence created since; so that prosecutions on subsequent penal statutes are not restrained thereby; but this statute is as to them, as it were repealed *pro tanto.* 1 *Salk.* 372.

For which any common informer may ground a popular action] Therefore this extends not to any suit by a party grieved, or by the attorney general; but only to those brought by common informers. 2 *Haw.* 269, 270.

General or quarter sessions, having power to hear and determine the same] Yet this gives no jurisdiction to justices of the peace, which they had not before; but only appoints, that where informations might have been brought in the courts at *Westminster* or before justices of the peace, such informations shall be now brought before justices of the peace only. *Cro. Car.* 112.

In the county where they were committed] *H. 7 G. Smith and Potter.* In the king's bench. In a *qui tam* on the 5 *Eliz.* for exercising a trade, without an apprenticeship, it was moved to stay the proceedings, because the nominal plaintiff had released, and the fact was laid at *Cambridge*, whereas the jurisdiction of the king's bench is at

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at last settled to be restrained by the 21 J. c. 4. to actions arising in the county where the king's bench sits, so that if they were to go on to trial, the plaintiff could have no effect of his suit. And of this opinion was the court, and they made a rule that proceedings should be stayed. *Str.* 415.

And not elsewhere] But where a subsequent statute gives a remedy for the recovery of a penalty in any court of record generally, it so far impliedly repeals this restraint, and consequently leaves the informer at his liberty to sue in the courts at Westminster. 2 *Haw.* 270.

Also, where a statute limits suits by an informer *quintam*, to other courts than those of *Westminster hall*; yet any one may, by construction of law, exhibit an information in the exchequer, for the whole penalty, for the use of the king. 2 *Haw.* 268.

12. If jurisdiction be given to the sessions to hear and determine, and it is not said by information; this shall be by indictment, and not information. *Cro. Car.* 112.

Sessions hath not power without express words.

13. By the 18 El. c. 5. Upon every information which shall be exhibited by a (common) informer, except for maintenance, champerty, buying of titles, or embracery; a note shall be made of the day, month, and year of the exhibiting thereof; and it shall be taken to be of record from that time forward and not before: and no process shall be issued on such information, till it be exhibited in form aforesaid. s. 1.

Time of exhibiting the information to be entered.

14. And by the 21 J. c. 4. No officer shall enter any information, bill or plaint, count or declaration, till the informer hath made oath before some of the judges of the court, that the offence was not committed in any other county, and that he believeth in his conscience, that the offence was committed within a year before the information or suit; the oath to be there entered of record. s. 3.

Oath to be made on exhibiting the information.

15. And in the court of king's bench, the clerk of the crown shall not (except by order of court) exhibit or receive any information in the name of the master of the crown office, for trespasses, batteries, or other misdemeanors, or issue any process thereupon, before he shall have taken, or shall have delivered to him a recognizance from the prosecutor, with his place of abode, title, or profession to be entered,—to the person against whom the information is exhibited, in the penalty of 20 l. that he will effectually prosecute such information, and abide by and observe such orders as the said court shall direct;

Recognizance to be given.

direct; which recognizance the said clerk of the crown, and also every justice of the peace where the cause of such information shall arise, are impowered to take; after the taking or receipt whereof, he shall make an entry thereof upon record, and shall file a memorandum thereof in some publick place in his office, to which all persons may resort without fee. 21 J. c. 4. s. 2, 6.

In the name of the master of the crown office] From hence it follows, that informations exhibited by the attorney general, remain as they were at the common law. 2 Haw. 262.

Rule to shew cause.

16. And the general practice of the court of king's bench is, not to order an information to be filed, without first making a rule upon the defendant to shew cause to the contrary. And this rule is never granted but upon motion in open court, grounded upon affidavit of some offence of an enormous kind, or dangerous tendency. The defendant must be personally served with the rule, and if he do not at the day given for that purpose satisfy the court by affidavits, that the substance of the charge is false or frivolous, or other reasonable cause against the prosecution, the court usually grants the information. *Barl. Inform.*

Process on an information.

17. By the 21 J. c. 4. *The like process shall be awarded, upon an information by a common informer, as in an action of trespass vi & armis at the common law.* s. 1.

And consequently, the process in all such suits must be by attachment, or *pone per vadios*, and after by distress infinite, where by the return the party appears to be sufficient, otherwise by *capias*. 2 Haw, 284.

Process to be indorsed.

18. And on every process upon an information by a common informer, shall be indorsed as well the party's name that pursueth the process, as also the statute upon which the information is grounded. 18 El. c. 5. s. 1.

Process on a criminal information.

19. But on a criminal information, it is the usual practice of the crown office, first, to award a *subpœna*; and after the return thereof, if no appearance be entred in four days, and an affidavit be made of the service of the *subpœna*, to make out a *capias* of course, where the defendants are informed against in their private capacity, and a *distingas*, where they are sued as a corporation aggregate. 2 Haw. 284.

General issue.

20. If any information, suit, or action, shall be brought against any person on a penal statute, the defendant may plead the

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the general issue, and give the special matter in evidence.

21 J. c. 4. f. 4.

21. The court will not generally quash an information upon motion, but the party must either plead, demur, or move in arrest of judgment. 1 Salk. 372. Str. 185, 953. Information not quashed upon motion.

22. But seeing that an information differs from an indictment in little more than this, that the one is found by the oath of 12 men, and the other is not so found but is only the allegation of the officer or person who exhibits it; whatsoever certainty is required in an indictment, the same at least is necessary also in an information; and consequently as all the material parts of the crime must be precisely found in the one, so must they be precisely alledged in the other, and not by way of argument or recital. 2 Haw. 260, 1. Certainty required in an information.

23. And therefore the statutes of jeofails (from *J'ay* Not aided by the statutes of jeofails, I have failed), or the statutes that do remedy oversights in pleading, extend not to informations. Wood. b. 4. c. 4.

24. If an information contain several offences against a statute, and be well laid as to some of them, but defective as to the rest, the informer may have judgment for so much as is well laid. 2 Haw. 266. Information good as to part.

25. Generally, if a (common) informer shall willingly delay his suit, or discontinue, or be nonsuit, or shall have a verdict or judgment against him, he shall pay costs to the defendant. 18 El. c. 5. f. 3. Costs against the plaintiff.

And in the court of king's bench particularly, if the defendant shall appear and plead to issue, and the prosecutor shall not at his own costs, within a year after issue joined, procure the same to be tried, or if a verdict passes for the defendant, or the informer procure a noli prosequi to be entered, the said court of king's bench may award the defendant his costs, unless the judge shall certify that there was a reasonable cause for exhibiting such information. And if the informer shall not, in three months after such costs taxed, and demand made, pay the same, the defendant shall have the benefit of the recognizance abovementioned, to compel him thereunto. 4 & 5 W. c. 18. f. 2.

Unless the judge shall certify] E. 13 G. 2. K. and Woodfall. Upon trial of an information for a libel, the jury, acquitted the defendant contrary to the direction of the court. Upon which the defendant moved above for costs on this statute, which provides, that in cases where the defendant

defendant is acquitted, the court is authorized to award costs to the defendant, unless the judge shall at the trial certify there was a reasonable cause. In this case, no such certificate was asked; but it was insisted on for the prosecutor, that it was discretionary in the court. The chief justice certified *ore tenus*, that it was a verdict against evidence; but then he and all the others held, that it was now too late to inquire into the probable cause; and that it was not discretionary, but compulsory upon them, where there was no certificate. So the defendant had his costs. *Str.* 1131.

Costs against the
defendant.

26. But it seems to be in a great measure settled, that, an *informer* upon a popular statute shall in no case whatsoever have his costs, unless they be expressly given him by such statute; for it is certain, that he cannot recover them by the common law, for that doth not give costs in any case: neither can he recover them by the statute of *Gloucester*, which gives the demandant his costs in all cases wherein he shall recover his damages; for this seems to suppose some damage to have been done to the demandant in particular, which cannot be said in any popular action. But it seems agreed, that an action on a statute by the party grieved, for a certain penalty given by such statute, is within the statute of *Gloucester*, because such penalty is intended him by way of recompence for his particular damage by the offence prohibited: and if he could recover that only, and no more by way of costs, it would be in most cases in vain for him to sue for it, since the costs of suit would exceed it. But it is said, that no costs shall be recovered in an action on a statute, which gives no certain penalty to the party grieved, but only his damages in general, if such a statute be introductive of a new law, and give a remedy in a point not remediable at the common law: but there is not that inconvenience in this case, as in the former; because no certain sum being specified, the jury may give the plaintiff a full satisfaction by way of damages. 2 *Haw.* 274.

Informer com-
pounding.

27. No (common) informer shall compound or agree with the defendant, but after answer made in court, nor after answer, but by the order or consent of the court; on pain of being set on the pillory, in some market town next adjoining, in open market, for two hours, and of being disabled to be informer on any penal statute, and also of forfeiting 10 l. half to the king, and half to the party grieved, to be recovered in any court of record, by action of debt or informa-

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tion. And the justices of assize, and justices of the peace in sessions, may hear and determine all offences against this act.

18 El. c. 5. s. 4.

28. And if the defendant plead a recovery by a for- Collusive action. mer action, which former action shall be found to have been collusive; the plaintiff shall recover, as though no such action before had been had: and if the defendant shall be convicted of such collusion, he shall be imprisoned two years, by process of capias and outlawry, and that as well at the king's suit, as of every other that will sue. 4 H. 7. c. 20.

And no release of any common person, to any such party, whether before or after any action popular, or indictment of the same commenced or made, hanging the same action, shall be available to surcease the said action, indictment, process, or execution: id.

Form of an Information qui tam.

Westmorland. **B**E it remembred, that A. I. of——in the county of——gentleman, who as well for our lord the now king as for himself doth prosecute, cometh before the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at their general quarter sessions of the peace holden at——in and for the said county, the——day of——in the——year of the reign of——in his proper person; and as well for the same lord the king, as for himself, giveth the court here to understand and be informed, That A. O. late of——in the county aforesaid yeoman, on the——day of——in the year aforesaid, at——aforesaid, in the county aforesaid, not regarding the laws and statutes of our said lord the king, but intending to——with force and arms [Here insert the offence with the same precision as in an indictment] against the form of the statute in that case made and provided: Whereupon the aforesaid A. I. as well for the said lord the king, as for himself, prayeth the advice of this court in the premises; and that the aforesaid A. O. may forfeit the sum of——according to the form of the statute aforesaid; and that he the same A. I. may have one moiety thereof; according to the form of the statute aforesaid; and also that the aforesaid A. O. may come here into this court, to answer concerning the premises; and there are pledges of prosecuting, John Doe and Richard Roe. And hereupon it is commanded to the said A. O. that all other things

Information.

things omitted, and all excuses laid aside, he be in his proper person at the next general quarter sessions of the peace to be holden for the said county, to answer as well to our said lord the king, as to the said A. I. who as well for the said lord the king, as for himself, doth prosecute, of and concerning the premisses, and further to do and receive what the said court shall consider in this behalf.

Ingrossing. See **Forefalling**.
Inns, Innkeepers. See **Alehouses**.
Insolvent debtors. See **Debtors**.

Inrollment.

NO manors, lands, tenements, or hereditaments shall pass from one to another, whereby any estate of inheritance or freehold shall be made or take effect in any person, or any use thereof to be made by reason only of any bargain and sale thereof, except the same bargain and sale be made by writing indented, sealed, and inrolled in one of the king's courts of record at *Westminster*; or else within the county where the lands lie, before the *custos rotulorum*, and two justices, and the clerk of the peace, or two of them at the least, whereof the clerk of the peace to be one: the same inrollment to be made in six months after date of the writings. Paying, where the land exceeds not 40 s. a year, 2 s. to wit, 12 d. to the justices and 12 d. to the clerk; and where it exceeds 40 s. a year, then paying 5 s. half to the justices, and half to the clerk: and the clerk of the peace shall inroll and ingross the same in parchment: The same to be kept amongst the records of the county. 27 H. 8. c. 16.

In the counties of *Lancaster*, *Chester*, and *Durham*, they may be inrolled in the respective courts there, or at the assizes. 5 El. c. 26.

The inrolling of deeds and wills of papists, belongs to title **Popery**.

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VOL.

Judgments.

1. **O**F judgments, some are fixed and stated; as in Judgments certain. cases of treason, felony, præmunire, and misprisions; the particular forms of which may be seen under their respective titles.

2. Others are discretionary and variable, according to Judgments variable. the different circumstances of each case; Thus for crimes of an infamous nature, such as petit larceny, perjury, or forgery at common law, gross cheats, conspiracy not requiring a villainous judgment, keeping a bawdy-house, bribing witnesses to stifle their evidence, and other offences of the like nature; it seems to be in a great measure left to the prudence of the court to inflict such corporal punishment, and also such fine, and binding to the good behaviour for a certain time, as shall seem most proper and adequate to the offence. 1 *Haw.* 445.

3. The court may assess a fine, but cannot award any Judgment in the offender's absence. corporal punishment against a defendant, unless he be actually present in court. 2 *Haw.* 446.

4. Where there are several defendants, a joint award of Judgment of a joint fine. judgment of a one fine against them all, is erroneous; for it ought to be several against each defendant; for otherwise, one who hath paid his proportionable part, might be continued in prison till all the others have also paid theirs, which would be in effect to punish him for the offence of another. 2 *Haw.* 446.

5. A fine is under the power of the court, during the Judgment in mitigation of fines. term in which it is set; and may be mitigated as shall be thought proper: but after the term, it admits of no alteration. 2 *Haw.* 446.

6. A judgment contrary to the verdict is void. Read. Judgment against the verdict. *Read.* Judgm.

7. By many statutes peculiar punishments are appointed for several offences, as pillory, stocks, imprisonment, and the like; and in all these cases, no room Judgment by particular statutes. is left for the justices discretion, for they ought to give judgment, and to inflict the punishment in all the circumstances thereof, as such statutes do direct. *Dalt. c.* 188.

Jurors.

NOTE; The statutes of the 4 & 5 *W. c. 24.* and 7 & 8 *W. c. 32.* hereafter following, were at first but temporary; but are referred to, and as it were adopted by the 3 *G. 2. c. 25.* Which act of the 3 *G. 2. c. 25.* is made perpetual by the 6 *G. 2. c. 37.* And all the said three acts of 4 & 5 *W. 7 & 8 W.* and 3 *G. 2.* are required to be read at every *Midsummer* sessions.

Trial by juries is the *Englishman's* birth right, and is that happy way of trial, which notwithstanding all revolutions of times, hath been continued beyond all memory to this present day; the beginning whereof no history specifies, it being contemporary with the foundation of this state, and one of the pillars of it, both as to age and consequence. *Tr. p. pais 3. * Dalt. c. 186.*

Concerning which I will treat in the order following:

- I. Who may or may not be jurors.
- II. Of making and returning lists of jurors.
- III. Of the sheriff's summoning and returning jurors.
- IV. Of the challenge of jurors.
- V. Of the demeanor of jurors in giving their verdict.
- VI. Of the indemnity and punishment of jurors.

I. Who may or may not be jurors.

1. Mr. *Hawkins* says, it doth not seem to be any where Grand jurymen, holden, that none but freeholders ought to be returned on a grand jury. 2 *Haw.* 216, 217.

But in another place he says, that by the common law, every grand juryman ought to be a freeman. 1 *Haw.* 215.

And L. *Hale* says, touching the yearly value of the estate of a grand juryman, he doth not find any thing determined; but freeholders they ought to be. 2 *H. H.* 155.

But in *Yorkshire*, they are to have 80 l. a year, freehold or copyhold. 7 & 8 *W. c.* 32. f. 8.

Also a grand juryman must be a lawful liege subject; and consequently, neither under attainder of any treason or felony, nor an alien, nor outlawed, whether for a criminal matter, or as some say, in a personal action; and from hence it seems, that any one who is under a prosecution for any crime, may by the common law, before he is indicted, challenge any of the persons returned on the grand jury, for the defect of any of the qualifications abovesaid. 1 *Haw.* 215.

The grand jury ought not to consist of an indefinite number; for no more ought to be sworn than twenty-three. For if a number amounting to two full juries or more, should be sworn, it might happen that a complete jury of twelve might find a bill to be true, though other twelve or more of the same jury might reject it as untrue; which would be inconvenient and absurd. *Burrow, Mansfield.* 1088.*

2. In the courts at *Westminster*, and city of *London*, Jurymen in the courts at Westminster, the jurors shall be householders within the city, and have lands, tenements, or personal estates, to the value of 100 l. 3 *G. 2. c.* 25. f. 19, 20.

And by the 4 *G. 2. c.* 7. f. 3. Leaseholders in the county of *Middlesex*, where the improved rents or value shall amount to 50 l. a year, over and above the ground rent or other reservations, shall be liable to serve on juries.

At the assizes or sessions.

3. At the assizes or sessions in the country, every juror, other than strangers *per medietatem linguae* in England, shall have in his own name, or in trust for him, within the county, 10l. a year, and in Wales 6l. a year, above reprints, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demesne, or in rents, or in all or any of them, in fee simple, fee tail, or for the life of themselves, or some other person: and if any of a lesser estate be returned, he may be discharged upon challenge, or on his own oath. 4 & 5 W. c. 24. f. 15. 3 G. 2. c. 25. f. 20.

And by the 3 G. 2. c. 25. f. 18. Persons having an estate in possession in land in their own right, of 20 l. a year above the reserved rent, being held by lease for 500 years or more, or for 99 years, or any other term, determinable on one or more lives, shall be liable to serve on juries.

From hence it appears, that lands *freehold*, *copyhold*, *ancient demesne*, or *leasehold*, do render persons liable to serve on juries. And some have thought that all lands are included under these denominations. And in *Coke's copyholder*, p. 14. it is said, that what land soever is not copyhold, is freehold. And in *Calibr.* 41. it is said, that copyhold lands may differ in name, but not in nature; for although copyhold lands be specially so called, because holden by copy of court roll, and customary lands by some special custom; yet they are all holden in one general kind, that is, by custom, and the diversity of their names doth not alter the nature of their tenure. Nevertheless, although all copyhold lands are customary, yet all customary lands are not copyhold, and consequently, as such, do not qualify a man to serve on juries. Of which kind of customary lands not being copyhold, the greater part of the county of *Westmorland* in particular doth consist. For which cause (and by reason of the number of persons disqualified by being quakers) the jurors in that county are in comparison but few. To remedy which inconvenience, it seemeth not unreasonable, that in the statutes limiting the qualification of jurors, amongst other denominations of tenure, the word *customary* should be inserted; for why should a copyholder of 10l. a year be obliged to serve, and a customary tenant of 100l. a year be exempted?

Jurors on trials of foreigners.

4. As to the strangers *per medietatem linguae* above-mentioned, it is enacted by the 28 Ed. 3. c. 13. that in

in inquests to be taken amongst aliens and denizens, before any judges, one half of the inquest shall be denizens, and the other half aliens, if so many there be in the place who are not parties: if not, then so many as there are.

And by the 27 *Ed. 3. st. 2. c. 8.* Before the mayor of the staple, if both parties be strangers, the inquests shall be taken by strangers; if both be denizens, by denizens; if the one party be denizen, and the other alien, half of the jury shall be denizens, and half aliens.

And these aliens need not have any qualification by their estate. 8 *H. 6. c. 29.*

But it seems that the *English* half of the jury ought to have estates of the same value as in other cases. 2 *Haw. 419.*

But by the 13 & 14 *C. 2. c. 11. f. 11.* In actions concerning tonnage and poundage, or ships or goods to be forfeited by reason of unlawful importation or exportation, there shall not be any party jury, but such only as are natural born subjects.

5. In towns corporate: Trials of felons shall be by men worth 40l. in goods, though they have no freehold. Jurors in towns corporate.
23 *H. 8. c. 13.*

And in 3 *Salk. 81.* it is said, that when the jury are of a town corporate, it is no challenge that they are not freeholders.

And the statutes which require jurors to be of such and such sufficiency, do generally except cities, boroughs, and towns corporate.

6. In the torn: Jurors shall have 20 s. a year freehold; In the torn, or 26 s. 8 d. copyhold. 1 *R. 3. c. 4.*

7. In the leet: It is said by some books, that any person happening to be present at a court leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the steward to be sworn, whether he be resident within the precincts of the leet, or not: by which it seems to be implied, that any person whatsoever is capable of being put upon the jury in a court leet. 2 *Haw. 69.* In the leet.

8. The coroner's jury, upon inquests taken before him, are to be of the neighbouring towns; but no qualification by estate is required by any statute. On the coroner's inquest. 2 *H. H. 152.*

9. Jurors to inquire of the concealments of other inquests, shall have lands of 40 s. a year. On other jurors concealing pre-fementments. 3 *H. 7. c. 1.*

On inquiries of forcible entry.

10. Jurors to inquire of forcible entry or detainer, shall have lands or tenements of 40s. a year. 8 H. 6. c. 9.

On inquiries of riots.

11. Jurors to inquire of riots, shall have 20s. a year, charter land, or freehold; or 26s. 8d. copyhold. 19 H. 7. c. 13.

In Yorkshire.

12. In *Yorkshire*: No person having 150l. a year, of such estate as will qualify him to serve on juries, shall be summoned to the sessions; but only persons less able to bear the expence of attending the assizes. 1 An. fl. 2 c. 13. f. 3. And if he doth serve at the sessions it shall not satisfy his turn, but he shall attend the assizes nevertheless. 10 Ann. c. 14. f. 6.

Persons under age.

13. Young men under 21 years of age, shall not serve upon juries. 7 & 8 W. c. 32. f. 4.

Persons above age, infirm, absent.

14. Old men above 70, persons continually sick, or being diseased at the time of the summons, or not dwelling in the county, shall not be put in juries of petit assizes; on pain of the sheriff paying damages to the party grieved, and being amerced to the king. 13 Ed. 1. fl. 1. c. 38.

And the equity of this statute, and also the reason of the thing, seem plainly so far to extend to grand juries, that if it shall appear, that any of the persons abovementioned be returned on a grand jury, the court will easily excuse their non appearance. But it seems clear, that any such persons being returned on a grand jury, may lawfully serve upon it if they think fit. 2 Haw. 216.

In what case women shall be jurors.

15. The jury ought to be men; yet there shall be a jury of women, to try if a woman be ensient, upon the writ *de ventre inspiciendo*. Ter. p. pais 86.

Surgeons.

16. By the 5 H. 8. c. 6. and 18 G. 2. c. 15. Free-men of the company of surgeons in *London*, are exempted from serving upon juries.

Apothecaries.

17. And by the 6 & 7 W. c. 4. Apothecaries, within *London* and seven miles thereof, being free of the company; and country apothecaries, who have served seven years apprenticeship, — shall be exempted from serving on juries, and their return shall be void, unless they shall voluntarily consent to serve. 6 & 7 W. c. 4.

Clergymen.

18. Clergymen cannot be impanelled upon juries. Lamb. 396.

19. Dissenting

19. Dissenting teachers, qualified under the toleration act, are exempted from serving on juries. 1 W. c. 18.

Dissenting teachers.

f. 11.

20. Also quakers. 7 & 8 W. c. 34. f. 6.

Quakers.

21. By the 4 & 5 W. c. 24. f. 21. No writ *de non processibus in assis & juratis*, shall be granted, unless upon oath made, that the suggestions upon which it is granted, are true.

Writs of exemption.

And the jurors ought to come in person and claim their privilege; for the sheriff cannot return it. *Tr. p. pais* 87.

II. Of making and returning lists of jurors.

1. The justices at *Midsummer* sessions, shall issue forth their warrants (A) under the hands and seals of two or more of them, to the high constables, requiring them to issue forth their precept to the petty constables, thereby directing and requiring them to make and return true lists in writing, of the names and places of abode, of all persons within their respective constable-wicks, qualified to serve on juries, with their titles and additions, between the ages of 21 and 70. High constable failing to issue his precept, shall forfeit 10l. on conviction at the assizes or sessions. 7 & 8 W. c. 32. f. 4. 8 & 9 W. c. 10. 3 & 4 An. c. 18. f. 5.

Precepts to the high and petty constables.

2. The petty constables, on request to any parish officer who shall have in his custody any of the rates for the poor or land tax, shall have free liberty to inspect such rates, and take from thence the names of freeholders, copyholders, or other persons qualified to serve on juries, dwelling within their respective precincts. 3 G. 2. c. 25. f. 1.

Petty constables may inspect the rates.

3. And shall yearly, 20 days at least before *Michaelmas*, upon two or more *sundays*, fix on the door of the church, chapel, and every other publick place of religious worship, an exact list of persons intended to be returned; and shall leave at the same time a duplicate thereof, with a churchwarden or overseer, to be perused by the parishioners without fee, to the end that notice may be given of persons qualified who are omitted, or of persons inserted by mistake who ought to be omitted. 3 G. 2. c. 25. f. 1.

Lists to be put upon the church door.

4. And if such petty constable shall wilfully omit any person who ought to be inserted, or insert any one

Penalty on the petty constable, for inserting persons wrongfully.

who ought to be omitted, or shall take any reward for omitting or inserting any person: he shall forfeit 20 s. on conviction before one justice, on confession, or oath of one witness; half to the informer and half to the poor of the parish or place, for which the list is returned: if not paid in five days, to be levied by distress. And such justice shall, in writing under his hand, certify the same to the next sessions; who shall direct the clerk of the peace to insert or strike out the name of such person so inserted or omitted wrongfully. 3 G. 2. c. 25. s. 2.

Lists to be delivered in a. the sessions.

5. The said petty constables, at *Michaelmas* sessions, shall deliver in the lists in open court. 7 & 8 W. c. 32. s. 4.

Or instead of this after they have compleated their lists, it shall be sufficient if they subscribe the same in the presence of one justice, and at the same time attest the truth thereof upon oath to the best of their knowledge or belief: And then the said lists, being first signed by the justice, and subscribed as aforesaid, shall be delivered by the said petty constables to the high constables, who shall deliver in the same at the said sessions in open court, attesting at the same time upon oath the receipt of such lists from the petty constables, and that no alteration hath been made therein since their receipt thereof. 3 G. 2. c. 25. s. 7.

Penalty on petty constables for not returning lists.

Persons not qualified, how discharged.

6. The constable failing to make return shall forfeit 5 l. to the king, to be recovered by bill, plaint, or information. 7 & 8 W. c. 32. s. 4.

7. And if any person, not qualified, shall find his name mentioned in such list, and the person required to make such list shall refuse to omit him, or think it doubtful whether he ought to be omitted; the justices at the sessions to which the lists shall be returned, on satisfaction from the oath of the party complaining, or other proof that he is not qualified, may order his name to be struck out, or omitted to be entred in the book. 3 G. 2. c. 25. s. 1.

Lists to be entred by the clerk of the peace;

8. The justices shall then cause the lists to be fairly entred in a book by the clerk of the peace, to be by him provided and kept for that purpose amongst the records of the sessions. 7 & 8 W. c. 32. s. 4.

on pain of 20 l.

9. Clerk of the peace neglecting his duty herein, shall forfeit 20 l. to him who shall sue by indictment at the sessions. 3 G. 2. c. 25. s. 2.

10. Duplicates

10. Duplicates of the said lists, when delivered in at the sessions, and entred in such book to be kept by the clerk of the peace for that purpose, shall during the said sessions, or within ten days after, be delivered by the clerk of the peace to the sheriff. 3 G. 2. c. 25. f. 2. Duplicates thereof to be delivered to the sheriff.

11. And the sheriff shall immediately take care, that the names shall be entred alphabetically, with their additions and places of abode, in a book to be kept by him for that purpose. 3 G. 2. c. 25. f. 2. The same to be entred by the sheriff.

12. And if the sheriff shall summon and return any person to the assizes, whose name is not in the duplicates; the judge may on examination in a summary way, fine him not exceeding 10 l. nor less than 40 s. 3 G. 2. c. 25. f. 3. Sheriff shall return none but those in the duplicates.

III. Of the sheriff's summoning and returning jurors.

1. By a clause in the commission of the peace, it is said,——We command our sheriff, that at certain days, which you (the justices) shall make known to him, he cause to come before you so many and such good and lawful men of his bailiwick (as well within liberties as without) by whom the truth shall be the better known and inquired into. Sheriff to summon jurors to the sessions.

2. It seems that justices of the peace may not order a jury to be returned immediately, nor on the same day, for the trial of a prisoner arraigned before them, as justices of gaol delivery may, unless the crime amount to felony, or the party consent to be tried immediately. Whether the sessions may order a jury to be returned immediately.

2 Haw. 406.

3. Also it seems that a jury may not regularly be returned before justices of the peace in their sessions, by a bare award of the court, as before justices of gaol delivery; but that there ought to be a particular precept to the sheriff for that purpose. 2 Haw. 405, 406. Whether by award of the court without precept.

4. But in cases of felony it is agreed (4 Inst. 164.) and is the usual practice, after the prisoners are arraigned and have pleaded to the country, for the justices to issue a precept to the sheriff, in nature of a *venire facias*, which may bear teste the same day that the prisoners plead, commanding the sheriff to return 24 jurors, to try the issue upon such a day; or they may make it returnable the same day that the prisoner pleads, How they may do the same in cases of felony.

pleads, as at the hour of one in the afternoon, or the like: and this precept must be in the name, and under the seals of the justices, or two of them (1 Q.) and not barely by an award upon the roll. 2 H. H. 261, 262.

Form of the venire facias.

5. The writ of *venire facias* by the statute of the 4 & 5 W. c. 24. shall be after this form: *The king, &c. We command, &c. that you cause to come before, &c. twelve free and lawful men of the vicinage of A. every of whom shall have 10 l. of land, tenements, or rents, by the year, at least; by whom, &c. and who neither, &c.* f. 15. (B.)

Why the jurors shall be returned of the neighbourhood.

6. The reason why they are required to come from the vicinage is, for that the neighbours are presumed to know what is done in the neighbourhood. 1 Inst. 158.

But yet this is not necessarily required; for they of one side of the county, are by law of the neighbourhood, to try an offence of the other side of the county. 2 H. H. 264.

And by the 4 An. c. 16. f. 6, 7. and 24 G. 2. c. 18. f. 3. to prevent challenges for default of hundredors, every *venire facias* for the trial of an issue in any action in the courts at *Westminster*, or in any action or information on a penal statute, shall be awarded of the body of the county where such issue is triable.

How many shall be returned and serve.

7. And although the words of the writ be twelve, yet by the ancient course, the sheriff must return 24, for the expedition of justice; for if twelve only should be returned, there would seldom a full jury appear; and in this case usage and custom makes the law. 2 H. H. 263. *Read. Jur.*

But the general precept that issues before a session is, to return 24, and commonly the sheriff returns upon that precept 48. 2 H. H. 263.

But in issues of *nisi prius*, the sheriff shall, upon his return of the writ of *venire facias juratores* (unless in causes intended to be tried at bar, or where a special jury shall be appointed) annex a panel to the said writ, containing the christian and surname, additions, and places of abode, of a competent number of jurors, the names of the same persons to be inserted in the panel annexed to every *venire facias*, for the trial of all issues at the same assizes; which number of jurors shall be not less than 48 in any county, nor more than 72, unless the judges shall order otherwise. And the writs of

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habeas corpora juratorum, or *disstringas*, subsequent to such writ of *venire facias juratores*, need not have inserted in the bodies of such writs the names of all the persons contained in such panel, but it shall be sufficient to insert in the mandatory part of such writs respectively, *the bodies of the several persons named in the panel annexed to this writ*, or words of the like import, and to annex to such writs respectively panels, containing the same names as were returned in the panel to such *venire facias*, with their additions and places of abode, that the parties concerned in any such trials may have timely notice of the jurors who are to serve at the next assizes, in order to make their challenges to them, if there be cause: and the persons named in such panels shall be summoned at the next assizes and no other. 3 G. 2. c. 25. s. 8. It is true, this gives them an opportunity of knowing how to make their challenges; but it also gives them an opportunity to another purpose, namely, of labouring the jurors,——a practice which cannot be too much discouraged.

In *Wales*; the sheriff shall summon out of every hundred or commote, not less than ten, nor more than fifteen; unless the judges shall order otherwise. 3 G. 2. c. 25. s. 9.

And in the counties palatine; The sheriff shall summon not less than 48, nor more than 72 (unless the judges order otherwise); and shall eight days before the courts be held, cause a list to be made of the persons summoned, which shall be hung up in the sheriff's office, to be inspected by any person. 3 G. 2. c. 25. s. 10.

Upon the grand jury; there may be, and usually are, more than 12: but if there be 12 assenting, tho' others dissent, it is not necessary for the rest to agree. 2 H. H. 161.

But upon a trial by a petit jury; it can be by no more nor less than 12, and all assenting to the verdict. 2 H. H. 161.

In the county of *York*; only one panel of 48 freeholders and copyholders, and no more, shall be returned to serve on the grand inquest at the assizes; and at the sessions, not above 40, either upon the grand inquest, or other service there. 7 & 8 W. c. 32. s. 8.

8. Every summons of jurors shall be made by the sheriff, his officer, or lawful deputy, six days before

Time and manner of summons.

at the least (and in *Wales* eight days before, and in the counties *palatine* 14 days before, 3 G. 2. c. 25. f. 9, 10.) shewing to every person so summoned the warrant under the seal of the office wherein they are appointed to serve; and if such juror be absent from the place of his habitation, notice of the summons shall be given by leaving a note in writing, under the hand of such officer, containing the contents thereof, at the dwelling house of such juror, with some person there inhabiting in the same. 7 & 8 W. c. 32. f. 5.

Penalty on the
sheriff or bailiff
neglecting.

9. If the sheriff, his deputy, or bailiff, neglect their duty herein, or excuse any person for favour or reward; he shall forfeit 20 l. to him who shall sue. 7 & 8 W. c. 32. f. 6. Or, he may be fined 10 l. or under, by the judge of assize. 3 G. 2. c. 25. f. 6.

And no bailiff, or other officer, shall summon any person, other than such whose name is specified in a mandate signed by the sheriff or under sheriff, and directed to such bailiff or other officer; on pain of 10 l. on a summary conviction before the judge of assize. 3 G. 2. c. 25. f. 6.

How often they
shall be sum-
moned and serve.

10. No persons shall be returned as jurors at the assizes; who have served within one year before in the county of *Rutland*, or two years before in any other county (not being a county of a city or town, and except the counties of *York* and of *Middlesex*); on pain that the sheriff, on examination and proof in a summary way, shall be fined by the judge not exceeding 5 l. 3 G. 2. c. 25. f. 4.

And the sheriff shall enter in a book, the names of such persons as shall be summoned and shall serve at the assizes, with their additions, and places of abode alphabetically, and the times of their services; and every person who hath served, shall (on application by him made to the sheriff) have a certificate *gratis*, testifying his attendance; and the said book shall be transmitted to the succeeding sheriff. 3 G. 2. c. 25. f. 5.

In the county of *York*; They shall not be returned above once in four years, at the assizes or sessions. 7 & 8 W. c. 32. f. 7. 10 An. c. 14. f. 5.

And if the sheriff of the county of *York*, neglect to keep such book as above, or to enter the names, or to deliver over to his successor the entries made for four years next before, or to deliver the certifi-

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cate gratis; he shall forfeit 100 l. half to the king, and half to him that shall sue. 3 & 4 An. c. 18.

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And if he shall summon or return any juror, who shall have served within four years, and shall not on producing the certificate discharge the summons or return, and thereof give notice to the party summoned, six days before the assizes or sessions; he shall forfeit 20 l. to the party, with full costs. 3 & 4 An. c. 18. f. 4.

In the county of *Middlesex*: No person shall be returned to serve as a juror, at any sessions of *nisi prius*, who hath been returned in the two terms or vacations next before: on pain of the sheriff being fined by the judge 5 l. or under. 4 G. 2. c. 7. f. 2.

And by the 7 & 8 W. c. 32. f. 9. The inhabitants of the city and liberty of *Westminster*, shall be exempted from serving in any jury at the sessions for *Middlesex*, by reason of their attendance at the courts of *Westminster hall*.

11. In any actions brought in the courts at *West-* Jury of view.
minster, where it shall appear to the court, that it is necessary that the jurors should have the view of the place in question, they may order special writs of *adstringas* or *habeas corpora* to issue, by which the sheriff shall be commanded, to have six out of the first 12 of the jurors, or some greater number of them, at the place in question, some convenient time before the trial; who shall have the matters in question shewn to them by two persons in the said writs named; and the sheriff by a special return upon the same, shall certify that the view hath been had according to the command of the said writ. 4 An. c. 16. f. 8.

And by the 3 G. 2. c. 25. f. 14. Where a view shall be allowed, six or more of the jurors in the panel, who shall be consented to by the parties on both sides, or their agents, or if they cannot agree, by the proper officer or judges of the court,——shall have the view, and shall be first sworn, or such of them as appear, before any drawing, and others shall be drawn to make up the number.

12. Tr. 8 W. a rule was made, that when the master Special jury.
is to strike a jury, viz. 48, out of the freeholders book, he shall give notice to the attornies of both sides to be present;

present; and if the one comes, and the other does not, he that appears shall according to the ancient course strike out 12, and the master shall strike out other 12 for him that is absent. 1 *Salk.* 405.

But if by rule of court, the master is ordered to strike a jury, in case it be not expressed in such rule, that the master shall strike 48, and each of the parties shall strike out 12; the master is to strike 24, and the parties have no liberty to strike out any. 1 *Salk.* 405. *M.* 8 *W.*

And the party who shall apply for a special jury to be struck, shall pay the fees for the striking such jury, and shall not be allowed the same on taxation. 3 *G.* 2. *c.* 25. *f.* 16. And also shall pay all the expences occasioned by the trial of the cause, and shall have no other allowance for the same upon taxation of costs, than he would be intitled to, if the cause had been tried by a common jury; unless the judge shall in open court certify upon the back of the record, that the same was a cause proper to be tried by a special jury. 24 *G.* 2. *c.* 18. *f.* 1.

And no person who shall serve upon a special jury, shall be allowed more than the sum which the judge shall think reasonable, not exceeding one guinea, except in causes wherein a view is directed. 24 *G.* 2. *c.* 18. *f.* 2.

On a motion for a special jury, in the case of the *King* against *Maccartney*, *T.* 2 *G.* for the murder of the duke of *Hamilton*, it was held by *Parker* chief justice, that there cannot be a special jury in cases of *treason* or *felony*; for the party must have the advantage of challenging 20 in case of felony, and 35 in case of high treason, without cause shewn. In cases of special juries, there are 48 brought before the master, and he takes 24; so there cannot be a rule for a good jury, not for a special jury, in this case of a trial at bar; for the jury will be the same with or without such a rule, for they are all good juries in *Middlesex*, and so in all cases of jurors at the bar; and if there should be a special jury, it would take away the advantage the party has of challenging peremptorily, although not of shewing cause. So no rule was made in this case, lest the sheriff in all other cases, when

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13. When a full jury at *nisi prius* (or on indictments, *Tales.* informations, or other actions on penal statutes, *4 & 5 P. & M. c. 7.*) shall not appear, or shall be reduced below the number by challenge, the judges on request of the plaintiff (or defendant, *14 El. c. 9.*) may command the sheriff to appoint so many other able persons of the county then present at the assizes, as shall make up a full jury; whose names shall be annexed to the panel. *35 H. 8. c. 6. f. 6.*

And by the *4 & 5 W. c. 24. f. 18, 19.* these tales-men, (*tales de circumstantibus*) shall have each 5l. a year, of like estate as other jurors; in Wales 3l.

But by the *7 & 8 W. c. 32. f. 3.* Tales-men in *nisi prius* shall be returned out of the other panels, returned to serve at the same assizes.

And the parties may have their challenges to the tales, as to other jurors. *35 H. 8. c. 6. f. 7.*

And if such tales-men, after they be called, be present, and do not appear, or after appearance do wilfully withdraw themselves, the judges may fine them; which shall be levied as issues forfeited by jurors, for default of their appearance at common law, have been accustomed to be levied. *35 H. 8. c. 6. f. 9.*

By the *4 & 5 W. c. 24. f. 20.* No fee shall be taken by any sheriff, clerk of assize, or any other person, for the return of any tales, or upon the account of any tales returned; on pain of 10l. half to the prosecutor, and half to the king.

14. No sheriff shall return any juror, without the addition of his dwelling, or some other addition by which he may be known; and no extract of issues shall be delivered out, without such addition; on pain of five marks to the king, and five marks to the party grieved; to be recovered in sessions, or elsewhere. *27 El. c. 7.* Addition to be returned.

15. By the common law, jurors returned, and not appearing, shall lose and forfeit the issues returned upon them. *35 H. 8. c. 6.* Jurors not appearing.

And if a jurymen be called, and (being present) refuse to appear; or, having appeared, withdraw himself before he be sworn, the court may set a fine upon him at their discretion. *2 H. H. 309. 35 H. 8. c. 6. f. 9.*

And

And. by the 29 G. 2. c. 19. a juror not appearing and serving in any court of record within the city of London, or in any other city or town corporate, liberty, or franchise, after being openly called three times, and oath made of his having been summoned, shall (without reasonable excuse on oath or affidavit to the satisfaction of the court) be fined not more than 40 s. nor less than 20 s. and on refusal to pay to such person whom the judge or judges shall appoint to receive the same, they shall levy the same by warrant of distress, rendering the overplus, the reasonable charges of distress and sale being first deducted; the same to be paid to the proper officer of the place, to be applied to such uses as issues set on jurors or other fines set in such courts are by charter, usage, or prescription applicable.

Penalty of recording persons who did not appear.

Drawing jurors names for trial.

16. If the clerk of assize, or other officer, shall record the appearance of any person who did not appear; he shall, on conviction before the judge of assize in a summary way, forfeit not exceeding 10 l. nor under 40 s. 3 G. 2. c. 25. s. 3.

17. Last of all; The name of each person summoned to try the issues of *nisi prius*, with his addition and place of abode, shall be written in several and distinct pieces of parchment or paper, as near as may be of equal size, and delivered to the marshal by the under sheriff. And the same shall by the marshal be rolled up, all, as near as may be, in the same manner, and put together in a box or glass to be provided for that purpose. And when any cause shall be brought on to be tried, some indifferent person by direction of the court, shall in open court draw out 12 of the said parchments or papers one after another. And if any of the persons, whose names shall be so drawn, shall not appear, or be challenged and set aside; then such further number, until 12 be drawn who shall appear, and after all causes of challenge, shall be allowed as fair and indifferent. And the said 12 persons so first drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being sworn, shall be the jury to try the cause. And the names of the persons so drawn and sworn, shall be kept apart by themselves in some other box or glass to be kept for that purpose, till such jury shall have given in their verdict, and the same is recorded, or until such jury shall by consent of the parties, or leave of the court, be discharged. And then the same names shall be rolled

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up again, and returned to the former box or glass, there to be kept with the other names remaining at that time undrawn. And so *toties quoties*, as long as any cause remains then to be tried. Provided, that if any cause shall be brought on to be tried, before the jury in any other cause shall have brought in their verdict, or be discharged; the court may order 12 of the residue of the said parchments or papers, to be drawn as aforesaid. 3 G. 2. c. 25. s. 11, 12.

IV. Of the challenge of jurors.

And herein,

- i. *Of the several kinds of challenge.*
- ii. *When the challenge is to be taken.*
- iii. *How the challenge shall be tried.*
- iv. *How panels may be reformed by the court, without challenge.*

i. *Of the several kinds of challenge.*

There are two kinds of challenge; either to the *array*, Two kinds of by which is meant the whole jury as it stands *arrayed* in challenge. the *panel*, or little square *pane* of parchment on which the jurors names are written: Or to the *polls*, by which are meant the several particular persons or *heads* in the array.

1 *Inst.* 156, 158.

1. Challenge to the *array*, is in respect of the partiality To the array; or default of the sheriff, coroner, or other officer that made the return: And this is two-fold;

(1) Principal challenge to the array: Which if it is Principal chal- made good, is a sufficient cause of exception, without lence to the ar- leaving any thing to the judgment of the triers. ray.

Causes of challenge of this sort, are such as these: If the sheriff, or other officer, be of kindred or affinity to the plaintiff or defendant, if the affinity continue. If any one or more of the jury be returned at the denomination of the party plaintiff or defendant, the whole array shall be quashed. If the plaintiff or defendant have an action of battery against the sheriff, or the sheriff against either party, this is a good cause of challenge. So if the plaintiff or defendant have an action of debt against the sheriff; but otherwise it is, if the sheriff have an action of debt against either party.

party. Or if the sheriff have parcel of the land depending upon the same title. Or if the sheriff, or his bailiff which returned the jury, be under the distress of either party. Or if the sheriff, or his bailiff, be either of counsel, attorney, officer, or servant of either party; gossip; or arbitrator in the same matter, and treated thereof. *1 Inst. 156.*

And formerly, if a peer was plaintiff or defendant, and a knight was not returned of the jury, the array might have been quashed: But now by the 24 G. 2. c. 18. s. 4. No challenge shall be taken to any panel of jurors, for want of a knight's being returned of the panel, where a peer is party.

And the subject may challenge the array against the king; as in traverse of an office, he that traverseth may challenge the array: And so it is in case of life. *1 Inst. 156.*

And where a subject may challenge the array, for undifferency, there the king being a party may also challenge for the same cause. *1 Inst. 156.*

The array challenged on both sides shall be quashed. *1 Inst. 156.*

Challenge to the
array for favour.

(2) Challenge to the array, for favour. He that taketh this must shew in certain the name of him that made it, and in whose time, and all in certainty. This kind of challenge, being no principal challenge, must be left to the discretion and conscience of the triers. As if the plaintiff or defendant be tenant to the sheriff, this is no principal challenge, but he may challenge for favour, and leave it to trial. So affinity between the son of the sheriff, and the daughter of the party, or the like, is no principal challenge, but to the favour; but if the sheriff marry the daughter of either party, or the like, this (as hath been said) is a principal challenge. *1 Inst. 156.*

But where the king is party, one shall not challenge the array for favour; because in respect of his allegiance, he ought to favour the king more: But if the sheriff be a menial servant of the king, there the challenge is good. *1 Inst. 156.* By which seems to be meant, that such challenge is not good, without shewing some actual partiality in the sheriff. *2 Haw. 419.*

But the king may challenge the array for favour. *1 Inst. 156.*

To the polls;

2. Challenge to the polls is threefold.

(1) Pe-

(1) Peremptory. This is so called, because a person may challenge peremptorily, upon his own dislike, without shewing of any cause. Peremptory challenge to the polls.

This peremptory challenge shall not be allowed to the king; for it is provided by the 33 *Ed. 1. ft. 4.* that he who challenges a juror for the king, shall shew cause, and the truth thereof shall be inquired of. And this extends as well to criminal, as civil causes. However, if the king challenge a juror, he need not shew any cause of his challenge, till the whole panel be gone through, and it appear that there will not be a full jury without the person challenged. And if the defendant, in order to oblige the king to shew cause, presently challenge all the rest, yet it hath been adjudged, that the defendant shall be first put to shew all his causes of challenge, before the king need to shew any. 2 *Haw. 413.*

And this peremptory challenge is not allowable to the party against the king, but only in case of treason or felony, in favour of life. 1 *Inst. 156.*

But in case of treason or felony, the prisoner by the common law might peremptorily challenge 35, which was under the number of three juries; but by the statute of the 22 *H. 8. c. 14. f. 6.* the number is reduced to 20, in petit treason, murder and felony; and in case of high treason, and misprision of high treason, it was taken away by the statute of the 33 *H. 8. c. 23.* but by the statute of the 1 & 2 *P. & M. c. 10.* the common law was again revived for any treason, and therein the prisoner shall have his peremptory challenge to the number of 35. 1 *Inst. 156.*

But as to all murders and other felonies, the statute of the 22 *H. 8. c. 14.* taking away the peremptory challenge of above 20 stands in force. 2 *H. H. 260.* But if the party challenge above that number, he shall not have judgment of death, but his challenge shall be over-ruled, and he shall be put upon his trial. *H. Pl. 259. 2 H. H. 270.*

Note; the above statute of the 1 & 2 *P. & M. c. 10.* by mistake hath been omitted out of Mr. *Hawkins's* edition of the statutes.

(2) Principal challenge to the polls: Where cause is shewn, but which if found true, stands sufficient of itself, without leaving any thing to the triers. Principal challenge to the polls.

Causes of principal challenge to the polls, are such as these:

I i 2

A peer

A peer is not to be sworn on juries, and he may be challenged by either party, or may bring a writ of privilege for his discharge. *1 Inst.* 156. *2 Haw.* 415.

Want of freehold, is a good cause of challenge. *1 Inst.* 156.

Also, if a person is an alien. *1 Inst.* 156.

If the juror be within the age of 21, it is a good cause of challenge. *1 Inst.* 157.

If a juror is above the age of 70, or is sick, or is non resident in the county, he may sue out a writ of privilege for his discharge; but if he be returned and appear, he can neither be challenged by the party, nor excuse himself from not serving, if there be not enow without him. *2 Haw.* 418.

If the juror be of blood or kindred to either party, this is a principal challenge, for that the law presumeth that one kinsman doth favour another, before a stranger; and how far remote soever he is of kindred, yet the challenge is good. *1 Inst.* 157.

Affinity, or alliance by marriage, is a principal challenge, if the same continues, or issue be had; otherwise, it is but to the favour. *1 Inst.* 157.

If the juror be godfather to the child of the plaintiff or defendant, or they to his child, this is allowed to be a good challenge in our books. *1 Inst.* 157.

If the juror hath part of the land that dependeth upon the same title, it is a principal challenge. *1 Inst.* 157.

It hath been allowed a good cause of challenge, on the part of the prisoner, that the juror hath declared his opinion beforehand, that the party is guilty, or will be hanged, or the like. *2 Haw.* 418.

Likewise if the juror gave a verdict before, for the same cause, or upon the same title or matter, though between other persons. *1 Inst.* 157.

So likewise one may be challenged, that he was indictor of the plaintiff or defendant in the same cause; for such a one, it may be thought, will not falsify his former oath. *Lamb.* 554. And if a grand juryman who was one of the indictors in the same cause, be returned upon the petit jury, and do not challenge himself, he shall be fined. *2 H. H.* 309.

If a juror hath been an arbitrator, chosen by the plaintiff or defendant in the same cause; and hath been informed thereof, or treated of the matter, this is a principal challenge;

lenge; otherwise, if he were chosen indifferently by either of the parties. 1 *Inst.* 157.

If he be of counsel, servant, or of fee, of either party, it is a principal challenge. 1 *Inst.* 157.

Also, if a juryman, before he be sworn, take information of the case, this is cause of challenge. 2 *H. H.* 306.

If any, after he be returned, do ~~eat~~ and drink at the charge of either party, it is a principal cause of challenge. 1 *Inst.* 157.

But it is not a principal challenge to a juror, but only to the favour, that the prosecutor was lately entertained at his house. 3 *Salk.* 81.

Actions brought by the juror against either of the parties, or by either of the parties against him, which imply malice or displeasure, are causes of principal challenge; other actions, which do not imply malice or displeasure, are but to the favour. 1 *Inst.* 157.

In a cause where the parson of a parish is party, and the right of the church cometh in debate, a parishioner is a principal challenge. 1 *Inst.* 157.

If either party labour the juror, and give him any thing to give his verdict, this is a principal challenge; but if either party labour the juror to appear, and to do his conscience, this is no challenge at all, but lawful for him to do so. 1 *Inst.* 157.

That the juror is a fellow servant with either party, is no principal challenge, but to the favour. 1 *Inst.* 157.

If the juror be attainted or convicted of treason or felony, or for any offence to life or member, or in attain for a false verdict, or for perjury as a witness, or in a conspiracy at the suit of the king, or in any suit (either for the king or for any subject) be adjudged to the pillory, tumbrel, or the like, or to be branded or stigmatized, or to have any other corporal punishment, whereby he becometh infamous; these, and the like, are principal causes of challenge. 1 *Inst.* 158.

So it is, if a man be outlawed in trespass, debt, or any other action, for he is *exlex*, and therefore not a lawful man. 1 *Inst.* 158.

And old books have said, that if he be excommunicated, he could not be of a jury. 1 *Inst.* 158.

3. Challenge to the polls for favour. This is, when either party cannot take any principal challenge, but sheweth causes of favour, which must be left to the con-

Challenge to the
polls for favour.

science and discretion of the triers, upon hearing their evidence to find him favourable, or not favourable. And the causes of favour are infinite. For all which, the rule of law is, that he must stand indifferent, as he stands unsworn. *1 Inst.* 157.

ii. When the challenge is to be taken.

1. No challenge can be taken either to the array, or to the polls, till a full jury have appeared. *2 Haw.* 412.

2. He that hath divers challenges must take them all at once. *1 Inst.* 158.

3. If a juror be challenged by one party, and after, be tried indifferent, it is time enough for the other party to challenge him. *1 Inst.* 158.

4. After challenge to the array, and trial duly returned, if the same party take a challenge to the polls, he must shew cause presently. *1 Inst.* 158.

5. If a juror be formerly sworn, if he be challenged, the party must shew cause presently, and that cause must rise since he was sworn. *1 Inst.* 158.

6. When the king is party, the defendant that challengeth for cause must shew his cause presently. *1 Inst.* 158.

7. But if a juror be challenged between party and party, and there be enough of the panel besides; the cause of challenge needeth not to be shewed, unless the other side challenges *touts per avail*. *Tr. p. pais* 143.

8. If a man, in case of treason or felony, challenge for cause, and he be tried indifferent, yet he may challenge him peremptorily. *1 Inst.* 158.

9. The prisoner must take all peremptory challenges himself, even in cases wherein he may have counsel. *2 Haw.* 413.

10. The challenge to the array, must be in writing (C); but where the challenge is to the polls, it is a short way by a verbal challenge. *Tr. p. pais* 172.

iii. How the challenges shall be tried.

1. The challenge of him who first challenged shall be first tried. *Tri. p. pais* 144.

2. If the array be challenged, it lies in the discretion of the court how it shall be tried; sometimes it is done by two coroners, and sometimes by two of the jury, with this dif-

difference, that if the challenge be for kindred in the sheriff, it is most fit to be tried by two of the jurors returned ; if the challenge found in favour of partiality, then by any other two assigned thereunto by the court. 2 *H. H.* 275.

3. When any challenge is made to the polls, if it be before any jurors are sworn, the court shall chuse the triers ; if two are sworn, they shall try ; and if they try one indifferent, and he be sworn, then he and the two triers shall try another ; and if another be tried indifferent, and he be sworn, then the two triers cease, and the two that be sworn on the jury shall try the rest : If the plaintiff challenge ten, and the defendant one, and the twelfth is sworn, because one cannot try alone, there shall be added to him one challenged by the plaintiff, and another by the defendant. *Finch.* 112. 1 *Inst.* 158.

4. The triers oath is, " You shall well and truly try, whether *A. B.* (the juryman challenged) stand indifferent between the parties to this issue : So help you god." 1 *Salk.* 152.

5. If the cause of challenge touch the dishonour or discredit of the juror, he shall not be examined on his oath ; but in other cases, he shall be examined on his oath, to inform the triers. 1 *Inst.* 158. 1 *Salk.* 153.

6. If the array be quashed against the sheriff, the process of *venire facias juratores* shall be directed to the coroners ; if against any of the coroners, then process shall be awarded to the rest ; if against all of them, then the court shall appoint certain elisors (so named *ab eligendo*), against whose return no challenge shall be taken to the array, because they were appointed by the court ; but he may have his challenge to the polls. 1 *Inst.* 158.

iv. How panels may be reformed by the court without challenge.

Besides the challenges which may be taken by the plaintiff or defendant, it is enacted by the 3 *H. 8.* c. 12. that in cases where the king is party, the justices of assize, or of the peace in sessions, may reform the panels of jurors, by putting to and taking out of the names of the persons in panelled by their discretion ; and if the sheriff do not return the panel so reformed, he shall

forfeit 20 l. half to the king, and half to him that shall sue.

And this extends both to grand and petit juries. 2 *H. H.* 156.

And hence it is, that if a prisoner be arraigned before the judge that sits upon the crown side, it is usual for the judge to send for a jury to the judge of *nisi prius*, and when the jury is brought, the sheriff returns them between the king and the prisoner; which is by virtue of this statute. 2 *H. H.* 265.

V. Of the demeanor of jurors in giving their verdict.

Jurors to be kept without meat or drink.

Bailiff sworn to keep them.

Whether eating and drinking shall avoid the verdict.

In what cases they may eat or drink.

May re-examine witnesses.

1. By the law of *England*, a jury after their evidence given upon the issue, ought to be kept together in some convenient place, without meat or drink, fire or candle, and without speech with any, unless it be the bailiff, and with him only if they be agreed. 1 *Inst.* 227.

2. And the bailiff ought to be sworn to keep them together, and not to suffer any to speak with them. 2 *H. H.* 296.

3. And if the jury after their evidence given to them at the bar, do at their own charges eat or drink, either before or after they be agreed on their verdict; it is fineable, but it shall not avoid the verdict; but if before they be agreed on their verdict, they eat or drink at the charge of the plaintiff, if the verdict be given for him, it shall avoid the verdict; but if it be given for the defendant it shall not avoid it, and so on the contrary. But if after they be agreed on their verdict, they eat or drink at the charge of him for whom they do pass, it shall not avoid the verdict, 1 *Inst.* 227.

4. But with the assent of the justices they may both eat and drink; as if any of the jurors fall sick before they be agreed of their verdict, then by the assent of the justices he may have meat or drink, and also such other things as be necessary for him and his fellows also, at their own costs, or at the indifferent costs of the parties, if they so agree: And if they cannot agree, the justices may in such case suffer the jury to have both meat and drink for a time, to see whether they will agree. *Dr. & St.* 158.

5. After their departure they may desire to hear one of the witnesses again, and it shall be granted so he deliver his testimony in open court; and also they may desire to

to propound questions to the court for their satisfaction, and it shall be granted, so it be in open court. 2 *H. H.* 296.

6. But if the plaintiff after evidence given, and the jury departed from the bar, or any for him, do deliver any letter from the plaintiff to any of the jury concerning the matter in issue, or any evidence, or any writing touching the matter in issue, which was not given in evidence, it shall avoid the verdict, if it be found for the plaintiff, but not if it be found for the defendant, and so on the contrary. But if the jury carry away any writing unsealed, which was given in evidence in open court, this shall not avoid their verdict, albeit they should not have carried it with them. 1 *Inst.* 227. May hear no evidences but in court.

7. A jury sworn and charged in a capital case, cannot be discharged (without the prisoner's consent) till they have given a verdict. 2 *Hawk.* 439. *Fest.* 22. Sir *John Wenderbourn's* case. Cannot be discharged without giving a verdict.

And the king cannot be nonsuit, for he is in judgment of law ever present in court. 1 *Inst.* 227.

8. If a jury say they are agreed, and it being asked who shall say for him, they say their foreman, but upon farther inquiry they are not agreed, they may be fined. 2 *H. H.* 309. May be fined for saying they are agreed, when they are not.

9. If a jury cast lots for their verdict, it shall be set aside, and they shall be fined for the contempt. 3 *Keb.* 805. 2 *Lev.* 140, 205. 2 *Jones* 83. Casting lots for their verdict.

M. 12 G. Hale and Cove. The jury having sat up all night agreed in the morning to put two papers into a hat, marked *Plaintiff* and *Defendant*, and so draw lots; *Plaintiff* came out, and they found for the plaintiff, which happened to be according to the evidence, and the opinion of the judge. Upon motion for a new trial, it was agreed that the verdict must be set aside; but the question was, whether the defendant should pay costs; the court inclined to give the plaintiff costs, comparing it to the case of a verdict against evidence; but at last it was agreed, that the costs should wait the event of the new trial. *Str.* 642.

10. The jury may give a verdict without testimony, when they themselves have consance of the fact. *Tr. p.* Giving verdict without evidence. *pais* 279. 1 *Vint.* 67.

11. But if they give a verdict on their own knowledge, they ought to tell the court so; but they may be sworn as witnesses; and the fair way is to tell the court before Juror may be a witness.

before they are sworn that they have evidence to give.
1 *Salk.* 405.

For certainly it is of dangerous consequence, to receive a verdict against evidence given, on supposal that some of the jury knew otherwise, or on private information given by any jurymen to the rest, where he cannot be cross examined. *Tr. p. pais* 209.

Private verdict.

12. After they be agreed, they may in causes between party and party, if the court be risen, give a private verdict, before any of the judges of the court; and then they may eat and drink; and the next morning in open court they may either affirm or alter their private verdict; and that which is given in court shall stand. 1 *Inst.* 227.

But in criminal cases of life or member, the jury can give no private verdict, but they must give it openly in court. 1 *Inst.* 227.

Special verdict.

13. In all causes, and in all actions, the jury may give either a general or a special verdict, as well in causes criminal as civil; and this court ought to receive a special verdict, if pertinent to the point in issue. 3 *Salk.* 373.

Thus if one be indicted for grand larceny, that is, for stealing goods above the value of 12 d. yet the jury may find specially, that he is guilty, but that the goods are not above the value of 12 d. In which case he shall only have judgment of petty larceny. 1 *Haw.* 95.

Jurors to try not the law, but the fact.

14. Jurors are to try the fact, and the judges ought to judge according to the law that ariseth upon the fact. 1 *Inst.* 226.

But if they will take upon them the knowledge of the law upon the matter, they may; yet it is dangerous, for if they mistake the law, they run into the danger of an attain; therefore to find the special matter is the safest way, where the case is doubtful. 1 *Inst.* 228.

But if the jury find according to the direction of the judge in matter of law, although the judge be mistaken, yet the jury shall not be liable to attain. *L. Raym.* 470.

Finding against evidence.

15. It hath been adjudged, that if the jury acquit a prisoner of an indictment of felony against manifest evidence, the court may, before the verdict is recorded, but not after, order them to go out again, and re-consider the matter; but this by many is thought hard, and seems not of late years to have been so frequently

frequently practised as formerly. However it is settled, that the court cannot set aside a verdict which acquits a defendant, of a prosecution properly criminal, as it seems that they may a verdict that convicts him, for having been given contrary to evidence and the directions of the judge, or any verdict whatsoever for a mistrial. 2 *Hawk.* 442.

16. After the verdict recorded, the jury cannot vary Varying from the verdict. from it; but before it be recorded, they may vary from the first offer of their verdict, and that verdict which is recorded shall stand. 1 *Inst.* 227.

17. A verdict finding an impossible matter shall not Verdict finding an impossibility. be void, if at the same time it find the substance of the indictment; but the surplus shall be rejected. 1 *Hawk.* 77.

18. Verdict shall not be taken so strictly as pleadings; Verdict how far to be taken strictly. but the substance of the thing in issue ought to be always found. 3 *Salk.* 373.

19. It is said, that if the jurors agree not, before Where they cannot agree. the departure of the justices of gaol delivery into another country, the sheriff must send them along in carts, and the judge may take and record their verdict in a foreign county. 2 *H. H.* 297. *Tr. p. pais* 274, 285. 1 *Vent.* 97.

But if the case so happen, that the jury can in no wise agree, as if one of the jurors knoweth in his own conscience the thing to be false, which the other jurors affirm to be true, and so he will not agree with them in giving a false verdict, and this appeareth to the justices by examination; the justices (as it seemeth) in such case may take such order in the matter, as shall seem to them by their discretion to stand with reason and conscience, by awarding a new inquest, or otherwise, as they shall think best by their discretion, like as they may do, if one of the jury die before the verdict. *Dr. & Stud.* 158.

VI. Of the indemnity and punishment of jurors.

1. If a man assault or threaten a juror, for giving a Threatning a juror. verdict against him, he is highly punishable by fine and imprisonment; and if he strike him in the court, in the presence of the judge of assize, he shall lose his hand, and his goods, and profits of his lands during life, and suffer perpetual imprisonment. 1 *Hawk.* 57, 58.

2. Where more than one of the persons returned on a Juror not appearing. jury do appear, but not a sufficient number to take an inquest,

quest, and some of the others come within view of the court, or into the same town in which the court is holden, but refuse to come into the court to be sworn; upon proof of such matter, the court may, at the prayer of the party, order the jurors who appeared, to inquire what is the yearly value of such defaulters lands, and after such inquiry made, either summon them to appear, on pain of forfeiting such sum as their lands have been found to be worth by the year, or some lesser sum, or impose a fine of the like sum upon them, without any farther proceeding. But it seems, that such juror shall be liable to lose his issues only for such default, and not the yearly value of his lands, unless the party pray it: But a juror who hath actually appeared, and after makes default, is said to be subject to such forfeiture of the yearly value of his lands, whether the party pray it or not; because his contempt appears to the court by its own record; yet even in this case, the court in discretion will sometimes only impose a small fine. Also it seems, that a juror who makes default without ever coming into the town wherein the court is holden, is liable only to lose his issues, or to be amerced, but not to be fined. 2 *Haw.* 146.

And by the 3 *G.* 2. c. 25. s. 13. in causes of *nisi prius*, every person whose name shall be drawn, and who shall not appear, after being openly called three times, shall on oath made of his having been lawfully summoned, forfeit not exceeding 5 l. nor less than 40 s. unless some reasonable cause of absence be proved, by oath or affidavit, to the satisfaction of the judge.

Whether a grand jury may be fined for not finding a bill.

3. If the grand jury at the assizes or sessions will not find a bill, the court may impanel another inquest (by the 3 *H.* 7. c. 1.) to inquire of their concealments and thereupon set fines upon them; but it seemeth that fines set upon grand inquests in any other manner, are not warrantable by law; for the privilege of an *Englismen* is, that his life shall not be drawn in danger without due presentment or indictment, and this would be but a slender screen or safeguard, if every justice of the peace, or judge of assize, may make the grand jury present what he pleases, or otherwise fine them. 2 *H.* 160, 1.

Juror taking a bribe.

4. If any juror do take of either party to give his verdict, he shall on conviction by bill or plaint, before the court where the verdict shall pass, forfeit ten times as much as he hath taken, half to the king and half to him

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38 *Ed. 3. st. 1. c. 12.*

5. It seems to be certain, that no one is liable to any prosecution whatsoever, in respect of any verdict given by him in a *criminal* matter, either upon a grand or petit jury; for since the safety of the innocent, and punishment of the guilty doth so much depend upon the fair and upright proceedings of jurors, it is of the utmost consequence, that they should be as little as possible under the influence of any passion whatsoever. And therefore, lest they should be biased with the fear of being harrassed by a vexatious suit, for acting according to their consciences, the law will not leave any possibility for a prosecution of this kind. And as to the objection, that an attain lies against a jury for a false verdict in a civil cause, and that there is as much reason to allow of it in a criminal one; it may be answered, that in an attain in a civil cause, a man's property is only brought into question a second time, and not his liberty or life. 1 *Haw. 191. L. Raym. 469.*

Whether a juror may be prosecuted for a verdict in a criminal matter.

6. But where the jurors give a false verdict upon an issue joined in any court of record, and judgment thereupon, the party grieved may bring his writ of attain in the king's bench or common pleas, upon which 24 of the best men of the county are to be jurors, who are to hear the same evidence which was given to the petty jury, and as much as can be brought in affirmance of the verdict, but no other against it. And if these 24 who are called the grand jury, find it a false verdict, then followeth this terrible judgment at the common law upon the petit jury; that the party shall be infamous, so as never to be received to be a witness, or a juror; shall forfeit his goods and chattels; and his lands and tenements shall be taken into the king's hands; his wife and children cast out of doors; his houses prostrated; his trees rooted up; his meadows ploughed up; and his body imprisoned. And seeing all trials of real, personal, and mixt actions depend upon the oath of 12 men, prudent antiquity inflicted a strange and severe punishment upon them, if they were attainted of perjury. 1 *Inst. 294. Read. Jur.*

Attain in a civil cause.

But now by the statute of 23 *H. 8. c. 3.* The severity of this punishment is moderated, if the writ of attain be grounded upon that statute; but nevertheless, the party grieved may at his election, either bring his writ of attain upon that statute, or at the common law. *Tr. p. pais 222.*

But this proceeding seems to be entirely disused at this day; and in the place of attain, motions are now usually made for new trials, when a verdict is against evidence. *Wood. b. 4. c. 4. 3 Blackst. c. 24. p. 389.*

But there can be no new trial for or against the king. *Tr. p. pais 210.*

Whether they
may be fined for
their verdict.

7. It seems to be the current opinion of the old books, that jurors are not subject to any prosecution for a false verdict except by way of attain: And there seem to be very few ancient precedents for the punishment either of a grand or petit jury, merely for giving a verdict against evidence, or the direction of the court, either in a capital or civil matter. *2 Haw. 147.*

And the fining and imprisoning of jurors for giving their verdict, hath several times been declared in parliament an illegal and arbitrary innovation, and of dangerous consequence to the government, and the lives and liberties of the subject. *2 Keb. 180. Read. Jur.*

And in *Bushe's* case, it was resolved by all the judges, upon a full conference together, that a jury is not finable for going against their evidence, where an attain lies. And where an attain doth not lie, *L. Vaughan* says thus: "That the court could not fine a jurymen at the common law, where attain did not lie, I think to be the clearest position that ever I considered, either for authority or reason of law." And one reason for this is, because the judge cannot fully know upon what evidence the jury give their verdict; for they may have other evidence, than what is shewn in court; they are of the vicinage, the judge is a stranger; they may have evidence from their own personal knowledge that the witnesses speak false, which the judge knows not of; they may know the witnesses to be stigmatized and infamous, which may be unknown to the parties or court. And if the jury knew no more than what they heard in court, and so the judge knew as much as they, yet they might make different conclusions, as oftentimes two judges do; and therefore as it would be a strange and absurd thing, to punish one judge for differing with another in opinion or judgment, so it would be worse for the jury, who are judges of the fact, to be punished for finding against the direction of him who is not judge of the fact. *Tr. p. pais 225. L. Vaugh. 135.*

And to say the truth, says Lord *Hale*, it would be the most unhappy case that could be to the judge, if he at his peril must take upon him the guilt or innocence of the prisoner:

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prisoner: and if the judge's opinion must rule the matter of fact, the trial by jury would be useless. 2 H. H. 315.

But what if a jury gave a verdict against all reason, convicting or acquitting a person indicted of felony, what shall be done? If the jury *convict* a man, against or without evidence, and against the direction of the court, the court may reprieve him before judgment, and acquaint the king, and certify for his pardon: if the jury *acquit* him in like manner, the court may send them back again (and so in the former case) to consider better of it, before they record the verdict; but if they are peremptory in it, and stand to their verdict, the court must take their verdict and record it. 2 H. H. 309, 310.

A. Warrant for the returning lists of jurors.

Westmorland. { To Henry Holme, gentleman, high constable of the West Ward, within the county aforesaid.

AT the general quarter sessions of the peace of our sovereign lord the king, holden at——in and for the said county, the——day of July, in the——year of the reign of our said sovereign lord George the third, of Great Britain, France, and Ireland, king, defender of the faith, and so forth, before us——esquires, and others our associates, justices of our said lord the king, assigned to keep the peace of our said lord the king in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed:

These are to require you, upon sight hereof, to issue forth your precepts to all the petty constables within your said ward, thereby directing and requiring them, to make and return true lists of jurors, according to the form or to the effect here following; that is to say,

Westmorland, { To the constable of——
West ward.

BY virtue of a warrant from his majesty's justices of the peace in and for the said county, at their general quarter sessions assembled, unto me directed, you are hereby required to make a true list in writing, containing the names and places of abode, together with the titles and additions, of all persons, between the ages of 21 and 70, dwelling within your
constablewick,

Jurors.

constablewick, qualified to serve upon juries; that is to say, of every such person who hath in his own name, or in trust for him; within the county aforesaid, 10 l. a year above reprises, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demesne, or in rents, in all or any of them, in fee simple, fee tail, or for the life of himself, or some other person; or having land in possession in his own right of 20 l. a year above the reserved rent, being held by lease for 500 years or more, or for 99 years, or any other term determinable on one or more lives: in order to the making of which list, you may, if you think it needful, apply to any parish officer, who shall have in his custody any of the rates for the poor or land tax, and from thence take the names of such persons so qualified. Which list so being made as aforesaid, you are required, upon two or more sundays, at least 20 days before Michaelmas next, to fix on the door of the church or chapel, and of every other publick place of religious worship within your parish or other precinct; and leave at the same time a duplicate thereof with a churchwarden or overseer of the poor, to be perused by the parishioners gratis. And the said list you are also further required to deliver in at the next general quarter sessions of the peace, to be holden in and for the said county, in open court; or otherwise, you may in the mean time apply to one of his majesty's justices of the peace in and for the said county, and in his presence subscribe the said list, and attest the truth thereof upon oath; and the same (being first also signed by the said justice) you may deliver to me, to be by me delivered in at the said next general quarter sessions. Given under my hand at Barnskew in the said county, the ——— day of ——— in the ——— year ———

Henry Holme, High Constable.

And this you the said high constable are in nowise to omit, upon the peril that shall ensue thereof. Given under our hands and seals the day and year first above written,

E. Tho

B. The form of a writ to the sheriff to summon jurors, for the trial of an issue joined.

GEORGE the third, &c. To the sheriff of—— greeting. We command you that you do not omit by reason of any liberty within your county, but that you enter therein, and cause to come before—— twelve good and lawful men of the vicinage of—— whereof every one hath such lands, tenements, or rents, as will qualify them to serve upon juries, and who are neither of affinity to—— (the plaintiff) nor to—— (the defendant); to hear and do those things, which on our behalf shall be then and there enjoined them: And have you then there this precept. Witness A. B. and C. D. at—— the—— day of—— 4 & 5 W. c. 24. f. 15.

Note; The general precept for summoning jurors to the sessions, is contained in the precept for summoning the sessions, in the title *Sessions*.

C. Challenge to the array, because the sheriff is of kindred to one of the parties; from Coke's entries.

AND now at this day, to wit—— came the aforesaid A. the plaintiff, and B. the defendant, by their attorneys, and the jurors were impanelled, and demanded, and came, and thereupon the aforesaid B. challengeth the array of the panel aforesaid, because he said that that panel was arrayed by one John Zouch, knight, now and at the time of making the array aforesaid, sheriff of the said county of Derby, which said sheriff is a kinsman of the aforesaid John Manners (the plaintiff); to wit, the son of George Zouch, esquire, the son of John Zouch, knight, the son of John Zouch, esquire, the son of William lord Zouch, the son of Alan lord Zouch, the son of William lord Zouch, the son of Elizabeth daughter of William lord Roos, the father of William lord Roos, the father of Thomas lord Roos, the father of Eleanor mother of George Maners, knight, the father of Thomas earl of Rutland, the father of the aforesaid John Maners. And this he is ready to verify, whereupon he prayeth judgment, and that the said panel may be quashed. Which said challenge by—— and by—— triers, to this chosen and sworn, is found
V O L. II, K k true.

true. And therefore let the panel aforesaid be quasbed and amoved, &c. Tr. p. pais 160.

Challenge because the panel was returned at the instance of the party.

And upon this, the said ——— challenges the array of the said panel, because he says, that that panel was arrayed by one J. S. esquire late sheriff of the county of ——— aforesaid, at the nomination of the said ——— and in his favour; which said challenge, by triers thereof sworn is found true.

For other forms of challenges, and proceedings thereupon, see Tr. per. pais 159—184.

Justifiable homicide. See Homicide:

Here endeth the SECOND VOLUME.



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